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Guidelines for Review and Analysis of Texas
Municipal Second Hand Smoke (SHS) Ordinances:
Short Edition

Phyllis Gingiss, Dr.P.H.
Melynda Boerm, M.Ed.
Cynthia Roberts-Gray, Ph.D.
Laura D. Hermer, J.D., L.L.M.
Janie Marshall, M.A.

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Phyllis Gingiss, Dr.P.H. is Professor of Public Health Education, University of Houston, and Adjunct Professor of Family and Community Medicine, Baylor College of Medicine. She is Director of the Health Network for Evaluation and Training Systems (NHETS), University of Houston and serves as Principal Investigator for the Texas Tobacco Prevention and Control Research and Evaluation Project conducted at the University of Houston.

Melynda Boerm, M.Ed. is Program Director for the Texas Tobacco Prevention and Control Research and Evaluation Project conducted by HNETS at the University of Houston

Guidelines for Review and Analysis of Texas Municipal Second Hand Smoke (SHS) Ordinances

I. Criteria for Municipality Selection

- A. All incorporated TX municipalities with populations of greater than 5000 residents
- B. All municipalities in the East Texas Pilot Study of 2000 – 2002 (Public Health Regions 4, 5, and 6) sponsored by the Texas Tobacco Prevention Initiative of Texas Department of State Health Services
- C. Municipalities of less than 5000 residents that have identified SHS ordinances
- D. Representation of each county by at least one municipality. When no municipality with less than 5000 residents is identified as having a SHS ordinance in a county, the county seat was contacted and included in the study. This insured that almost all counties in Texas were represented, although a few Texas counties do not have *any* incorporated cities and thus may not be included in the database.
- E. Municipality populations and demographic data displayed on this website are from the U.S. Census, 2000.

II. Analysis Procedures

- A. Based on results of review of the research literature,¹⁻⁴ the difficulties of coding complex and often ambiguous language in tobacco-control laws, and months of trial, error, discussion, and resolution, the project team adopted a two-reviewer system for each ordinance. Results are entered into a database, and selected variables from the database are used to generate the website reports. The balance of the variables are to be used for secondary analyses. Only those variables included in this website are described in this methods section.
- B. The guidelines presented in this document were developed for purpose of research and evaluation of tobacco control and are not intended to be a legal opinion.

III. Review and Analysis: Definitions/explanations of terms and scoring criteria

Six aspects of municipal ordinances are defined and/or scoring criteria described: A) ordinance history, B) settings where smoking is restricted; C) level of restrictiveness for focal settings; D) level of exemption of bar coverage based on percentage of gross annual sales of alcoholic beverages; E) setting details; and F) provisions for enforcement and sanctions. Each will be briefly described below. An expanded description is available upon request.

- A. Ordinance Background.** A project goal is to facilitate tracking of changes in the proportion of the state population protected from exposure to SHS smoke. Therefore, documentation of the date of passage of the ordinance and/or amendments to the

ordinance, the date on which the ordinance requirements become effective, and the date of review of the ordinance are important variables.

- *Passage date* refers to the month, day, and year of the most recent revision; it encompasses the complete ordinance, including latest modifications plus any components of the ordinance carried over from an earlier date. This date is shown on reports for individual municipalities.
- *History* indicates if the given ordinance is current or repealed. *Repeal date* is automatically set in the database to the date of passage of a subsequent ordinance that supercedes, amends, or replaces the prior one. Reports on this website present results only for current ordinances.

B. Focal settings where smoking is restricted. Ordinances vary in their definitions of public places, as do methods of implementing smoking restrictions in these locations. Because of these variations, comparing smoking restrictions across communities can be difficult. To assist in examination, the following categorizations of focal settings are used for review and analysis:

- Municipal worksites
- Private sector worksites
- Restaurants
- Bars – in restaurants
- Bars – not in restaurants

Commercial and home-based child-care ordinance provisions are not included as focal settings in reports on this website because Texas Regulations effective September, 2003, prohibit smoking in child-care homes and child-care centers. However, a summary of results of municipality coverage of childcare settings may be provided by request.

Because ordinances vary in definitions of “public places,” unless the focal settings (municipal and private worksites, restaurants, and bars in or bars not in restaurants) are *specifically* stated within the ordinance, they are not scored as covered. In order to standardize scoring, “intent” to include settings not specifically stated was not utilized.

A setting not specifically stated within the ordinance is scored as “No Coverage.”

C. Level of restrictiveness ratings for focal settings. For each setting, a rating and a descriptor are assigned to indicate the extent to which the restriction helps to protect from SHS exposure

Rating	Descriptor	Criteria
5	100% Smoke Free	No smoking allowed in a particular setting
4	Moderate	Either no smoking allowed OR designated smoking areas are allowed if separately ventilated. The owner or manager may choose to be smoke free or designate separately or independently ventilated smoking areas.
3	Mixed	Either no smoking is allowed OR designated smoking areas are allowed if separately or independently ventilated, but coverage is partial due to exceptions, ambiguities, or legal issues.
2	Limited	Designated smoking areas allowed or required.
1	No Coverage	No restrictions on smoking in a setting, even if a SHS ordinance exists.
Note: A setting not specifically stated within the ordinance is scored as “no coverage.”		

D. Bars.

- *Bars* refers to an ordinance designation of bars, lounges, taverns, cabarets, nightclubs, private clubs, cocktail lounges or other establishments with alcohol for on-premise consumption.
- *Bar type* refers to categorization of bars into restaurant bars and/or bars not in restaurants. If bars are cited, but no distinguished is made between restaurant and/or non-restaurant facilities, it is assumed that any noted restrictions or exemptions apply equally to both. When bar type is differentiated, either by reference to both bars in restaurants and in other places or reference to only one type of bar, restaurant bars are scored separately from bars not in restaurants.
- *Percent of gross annual sales from alcohol* is a frequently used criterion for defining and exempting bars from smoking restrictions in a municipal ordinance. The following guidelines categorize level of exemption of bars based on percentage of gross annual sales of alcoholic beverages.

Ratings	Bar exemption status based on percentage of gross annual sales of alcoholic beverages*
5	Bars are not subject to ordinance exemptions
4	Exempt if $\geq 70\%$ of sales are from alcohol
3	Exempt if $\geq 50\%$ but $< 70\%$ if sales are from alcohol
2	Exempt if $\leq 50\%$ of sales are from alcohol
1	Bars are completely exempt from ordinance restrictions
0	Bars are not specifically stated in the ordinance
*If bars are specifically stated, but no distinction made between bars located in restaurants and/or those not in restaurants, it is assumed that restrictions and/or exemptions apply equally to both.	

E. Setting Detail. Additional provisions are described that influence SHS protection in the three focal settings other than bars. The following terms were scored “yes” if the ordinance requires the following:

1) Worksites.

- *Minimum number of employees* – The minimum number of employees at a work site necessary for the ordinance to be in effect. The number of employees specified, if any, is recorded.
- *Non-retaliation provision* – An employee is protected from retaliation for enforcing or attempting to enforce the ordinance.
- *Nonsmokers rights* – The non-smoking employee has the ultimate authority regarding smoking in a designated area, whether or not signs or other indications exist that smoking is generally allowed.
- *Written policy* – The worksite is required to establish written policies regarding smoking in the workplace.
- *Signage* – Signs are required to be displayed designating smoking or nonsmoking areas and/or providing other items described within the ordinance.
- *Ventilation* – Designated smoking areas must have systems in place to help protect nonsmoking areas from the flow of tobacco smoke (e.g., separate ventilation; air purification, directional fans).

2) Restaurants.

- *Minimum seating capacity* – A restaurant is required to have a minimum number of seats for the ordinance’s terms to apply to the restaurant. The number or percentage of seats specified, if any, is recorded.
- *Signage and ventilation.* See worksites (above).

3) **Radius.** - The ordinance explicitly exempts and/or restricts smoking outside the doors of a restricted facility. The *distance in feet*, if specified, also is recorded to describe the exempted/restricted radius outside the doors.

E. Enforcement and Penalties.

The presence of an enforcement authority or penalty is scored “yes” if the ordinance designates the following:

- *Enforcement authority.* A specific agency, department, office, or individual that has responsibility to enforce the ordinance. Type of enforcing entity (e.g., law officer) also is recorded. If violation of the ordinance is described as a misdemeanor, it is assumed that a law officer is an enforcing entity, whether or not the ordinance specifically names police or other law officers as enforcers.
- *Penalty* – Specification of a fine or other penalty to the business and/or to the smoker for violation of the ordinance. The reviewer records the amount of fine, if any, for first violation; additionally, it is recorded if there is an increase in penalty for subsequent violations. When an increase in penalty exists, the amount of subsequent penalties is recorded. Type of other penalty (e.g., criminal charge) also is recorded.

IV. Website Reports Generated

Analysis of the ordinances is combined with demographic information about the municipalities obtained from the U.S. 2000 Census and the Texas Department of State Health Services to generate reports at two levels: A) Individual Municipalities and (B) Summary Across Multiple Municipalities. Only current SHS ordinances which provide coverage in at least one of the five focal settings is included in the web-based reports that summarize data across multiple municipalities.

A. Reports for Individual Municipalities

- *Text of the ordinance for an individual municipality* – The document received by a given municipality as evidence of having a municipal ordinance with smoking or tobacco restrictions is scanned into the database. It can be viewed in its entirety. These documents constitute the “raw” data for review and analysis. When an ordinance has been amended, the new section is combined with existing unmodified sections. The new composite ordinance then is reviewed.

- *Profile for an individual municipality* – If a municipality’s current ordinance provides coverage for at least one of the five focal settings, a profile is provided. It covers the following: restrictiveness by setting, level of exemption for bars, setting details, and enforcement and penalties.
- *Abbreviated Report for Individual Municipality* – If a municipality has supplied a document for review and analysis, but that document does not meet criteria for a full report, a very brief summary statement is provided on the website to indicate the category by which that ordinance is classified.
 - Ordinance reference to tobacco in a secondhand smoke (SHS) context in “other” areas only (e.g., bingo parlors, museums, retail stores, shopping malls); OR
 - Ordinance reference to tobacco in a context other than SHS (e.g., youth access, fire safety); OR
 - No known SHS ordinance, but reference to smoking in a city policy, minutes of a city council meeting, or other municipal documents.

Details can then be found using the report option for text of the ordinance for an individual municipality. .

B. Summary Reports Across Multiple Municipalities

All reports may be viewed by the report scope of user choice: Statewide, Public Health Region, or County. Because municipalities may span multiple counties, on the website County is selected and reported for the predominant county (based on population) of a municipality.

In the summary reports, the denominators for reported percentages are based on the total of known ordinances with SHS provisions within the scope selected, (e.g., State, one or more Public Health Regions or Counties). This number of ordinances in each report is cited at the top of that report.

In summary reports, the groupings pertaining to restaurants, radius, worksites, enforcement and penalties are independently scored; no grouping totals should be inferred. The numbers and percentages with ventilation requirements do not include those 100% Smoke Free, where the situation is not applicable.

The following summary reports are included on this website:

- *Summary Profile* – Ordinances with restrictions on smoking in at least one of the five focal settings are used in summary reports. The summary reports provide aggregate information in the same categories included in individual municipality reports. Percentage of municipalities with various ordinance features is based on the number of municipalities in the selected scope (State or one or more Public Health Regions or Counties). The total number of municipalities in each report is included in the report title.

- *Bar & Restaurant Summary* – This report focuses on bar and restaurant settings. It provides information about restrictiveness, coverage, and setting details in the same categories as presented in the Summary Profile. Additional details about restrictions and exemptions for bars are also included.
- *Municipalities Ranked by Restrictiveness* – Lists are provided of the Level of Restrictiveness (see section IIIC) across the five focal settings reported on the website, as well as select demographic characteristics of the municipalities. The order in which the municipalities are listed can be sorted as ascending or descending on the rating for each of the focal settings.
- *Lists of Municipalities within a Specified Scope* — Reports may be customized to present municipalities by Level of Restrictiveness in any of the five focal settings of the ordinance, population size, and/or percentage minority population.

IV. Expanded Guidelines. Expanded guidelines for scoring and analysis, which include examples of applications of HNETS decision-rules and the rationale for such decisions, are available upon request.

References

1. Fishman J, Harmony A, Knowles S, Fishburn B, Woolery T, Marx W, Shelton D, Husten C, Ericksen M (1999) State Laws on Tobacco Control – United States, 1998, *MMWR* 25, 1999/48(SS03);21-62.
2. National Cancer Institute (2000) State and local legislative action to reduce tobacco use, *Smoking and Tobacco Control Monograph 11*, NIH Pub. No. 00-4804.
3. Smoke free ordinances (1998-2002) American Nonsmokers' Rights Foundation. www.no-smoke.org
4. State Tobacco Activities Tracking and Evaluation (STATE), www.cdc.gov/tobacco/