



NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY

Public Health Law: Core Value in the 21st Century

Marice Ashe, JD, MPH

ASTHO/NACCHO Conference

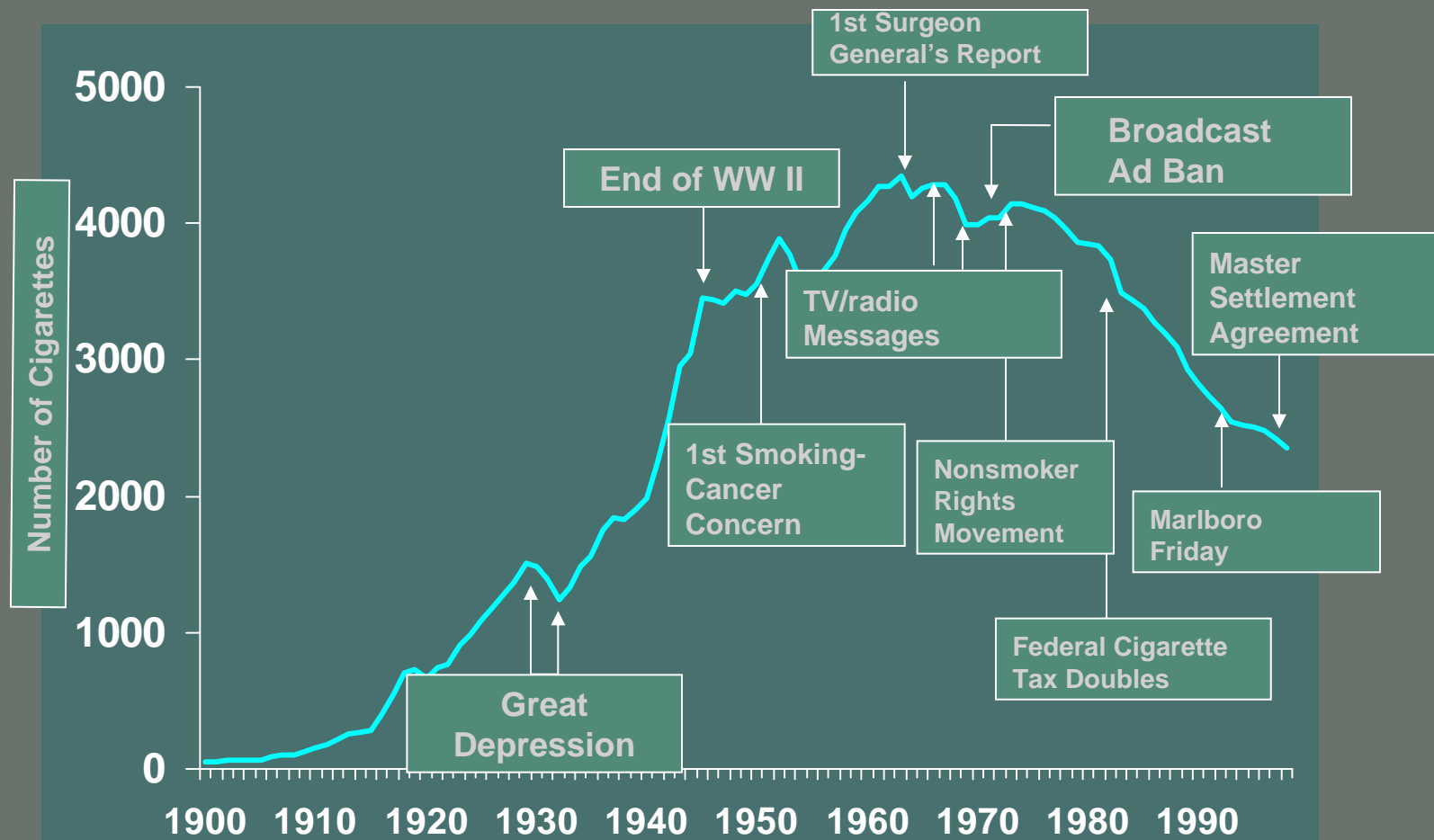
September 11, 2008





Social Norm Change

Adult Per Capita Cigarette Consumption and Smoking-and-Health Events 1900-1998



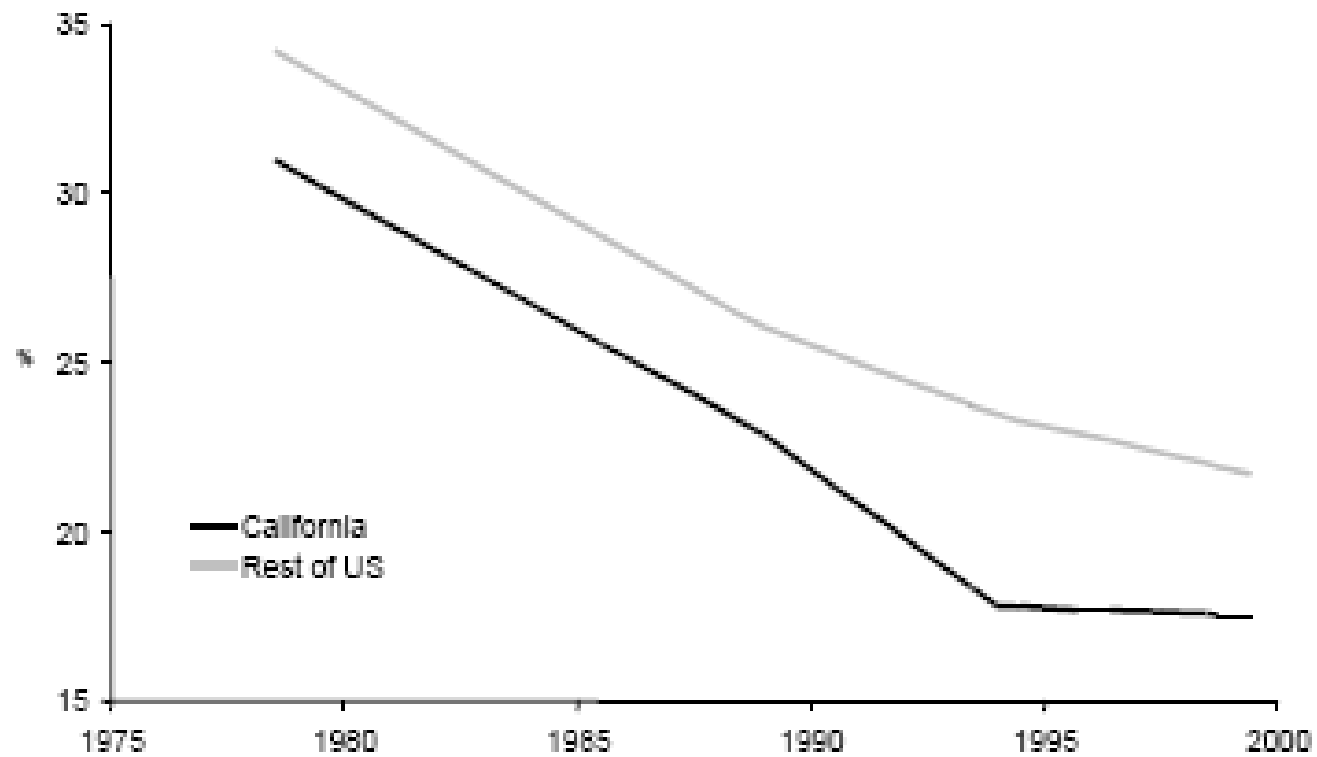
Source: USDA; 1986 Surgeon General's Report

Best Practices for Comprehensive Tobacco Control Programs

- State and community interventions, *including adoption of laws*
- Media campaigns
- Cessation services
- Surveillance and evaluation
- Administration



Smoking Prevalence among Adults Aged 18 and Older, California vs. US



Source: NHIS, 1978, 1979, 1980, 1983, 1985, 1987, 1988, 1990, 1991, 1993, 1994, 1997, 1998; CPS 1992-1993, 1995-1996, 1998-1999

Figure 1.6

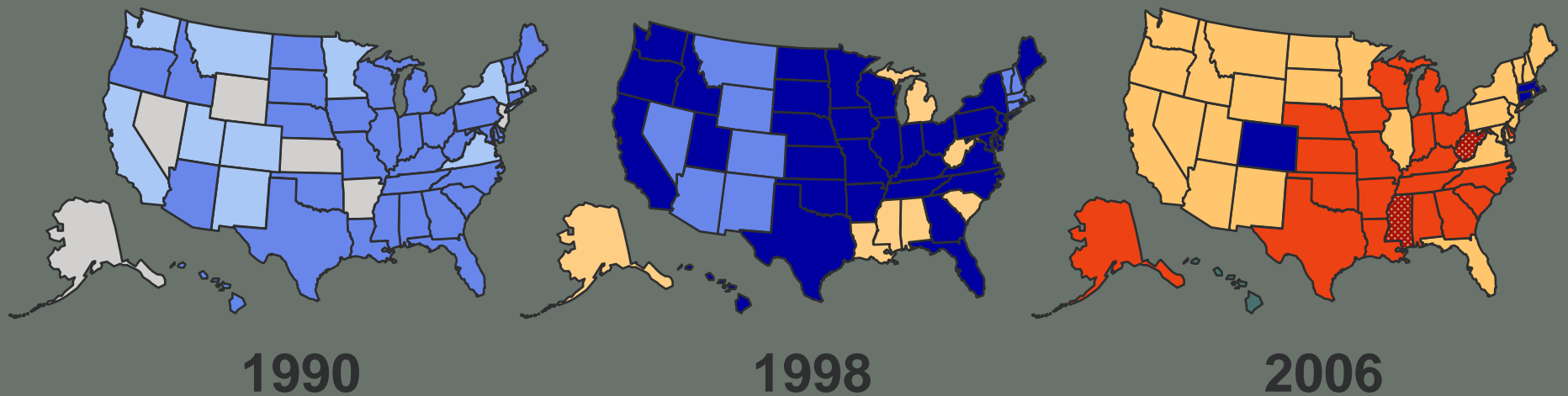
Results of Social Norm Change: Tobacco Control

- **California Tobacco Control Program 1989 – 2004**
 - \$86 billion (95% CI \$28 billion to \$151 billion) were saved in personal health care expenditures
 - 50-fold return on the \$1.8 billion spent on the program during the same period
 - 3.6 billion (95% CI 1.5 billion to 5.9 billion) fewer packs of cigarettes were sold
 - a loss of \$9.2 billion (95% CI \$3.8 billion to \$14.7 billion) to the tobacco industry in pre-tax cigarette sales

Obesity Trends* Among U.S. Adults

BRFSS, 1990, 1998, 2006

(*BMI ≥ 30 , or about 30 lbs. overweight for 5'4" person)



No Data

<10%

10%–14%

15%–19%

20%–24%

25%–29%

$\geq 30\%$





nplan

**NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY**

Local Venues for Change: Legal Strategies for Healthy Environments

Marice Ashe, Lisa M. Feldstein, Samantha Graff, Randolph Kline, Debora Pinkas, and Leslie Zellers

Mounting evidence documents the extraordinary toll of the consumption of tobacco products and physical inactivity on health and death in the United States. Causes of preventable disease and death include lack of exercise and poor diet. It is estimated that 6% of all adult deaths and 11% of Medicaid costs are due to obesity.¹ According to the Centers for Disease Control and Prevention, the direct costs of physical inactivity was \$117 billion in 2005.

In response to these health concerns, local policymakers have begun to adopt legal strategies to encourage healthful behaviors. Tobacco control measures include seeking strategies to reduce tobacco use, rather than pursuing strategies that encourage individual behavioral change.

Specifically, denormalization strategies change the environmental context to influence choices. The goal of a denormalization strategy is to indirectly influence the legal climate in which choices are made. For example, when foods becomes less desirable, the availability of healthy foods becomes less desirable.² For example, when taxes on tobacco products increase, the number of smokers and the number of people who smoke in public places decreases. This is an important public health strategy to reduce tobacco-related health problems in communities.

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RESEARCH

Legal Risks to Employers Who Allow Smoking in the Workplace

Leslie Zellers, JD, Meliah A. Thomas, JD, and Marice Ashe, JD, MPH

There is mounting evidence that documents the dangers of exposure to secondhand smoke, including in the workplace. In states that permit workplace smoking, employers face significant legal risks from employees who are exposed to secondhand smoke on the job. Employers have been held liable for employee exposure to secondhand smoke in numerous cases, including those based on workers' compensation law, federal disability law, and state anti-discrimination law. When the legal risk is eliminated, employers who voluntarily adopt smoke-free workplace policies. Such policies do more than fulfill an employer's legal obligation to provide a safe workplace; they also reduce the risk of litigation, potentially reduce workers' compensation premiums, and protect employees from harm. (*Am J Public Health*. 2007;97:1376-1382. doi: 10.2105/AJPH.2006.094102)

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To protect employees and patrons from the dangers of exposure to secondhand smoke, many state and local governments have passed laws creating smoke-free workplaces, including bars, restaurants, and other hospitality venues.

These legal risks by voluntarily prohibiting smoking at their worksites.

SCIENTIFIC EVIDENCE AND SMOKE-FREE LAWS

Research conducted during the past several decades clearly documents that exposure to secondhand smoke causes death and disease in nonsmokers. Some research indicates that secondhand smoke is more toxic and potentially more dangerous than the smoke that is directly inhaled by the smoker.^{3,4} Nationally, the US Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a group A carcinogen, the most dangerous class of carcinogen.⁵ A recent report from the US surgeon general on the health consequences of involuntary exposure to tobacco smoke concluded that there is no safe level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor installing venti-

Additional research has focused on how exposure to secondhand smoke affects individual employees. For example, a major area of research has focused on biomarkers of secondhand smoke exposure in fluids such as urine and saliva. Several recent studies have shown that employees' exposure to secondhand smoke in the workplace causes significant increases in the uptake of tobacco-specific carcinogens.⁶⁻⁹ In a national study of nonsmoking workers, exposure to secondhand smoke varied significantly by occupation.^{5,10} Higher levels of exposure were observed in occupational groups that tend to be described as blue collar or service, such as waiters and bartenders, and lower levels in groups that tend to be described as white collar (e.g., office workers).⁵

Other studies have shown immediate improvements in air quality^{10,11} and workers' respiratory health^{12,13} when smoking is eliminated from hospitality venues. One such study monitored air quality in 7 different sites and documented an 80% reduction in particulate matter (PM) levels.

GOVERNMENT, POLITICS, AND LAW



**Center for Law and the Public's Health
at Johns Hopkins University**

University of California at Berkeley School of Law

University of Connecticut

University of Texas

**Public Health Advocacy Institute at
Northeastern Law School**

Public Health Law & Policy

**Rudd Center for Food Policy and
Obesity at Yale University**

**Tobacco Control Legal Consortium
at William Mitchell College of Law**



Research

Local Menu Labeling and State Law Preemption

I. INTRODUCTION

This memorandum will address the question of whether a local ordinance requiring restaurants to provide nutrition information on menus or menu boards would be preempted by California law.

preempted by California law. The purpose of this memorandum is to provide information on the current state of the law regarding menu labeling.

This memorandum is intended to provide information on the current state of the law regarding menu labeling. It is not intended to provide legal advice.

II.

In December 2009, the California State Assembly adopted Assembly Bill 1033, which would require chain restaurants to provide nutrition information on menus or menu boards.

Based on the current state of the law, it is likely that a local ordinance requiring menu labeling would be preempted by California law.

Presumably, a local ordinance requiring menu labeling would be preempted by California law.

Model California Ordinance Requiring Nutrition Information Menu Labeling at Chain Restaurants (with Annotations)

Public Health Law & Policy
180 Grand Avenue, Suite 750
Oakland, California 94612
Phone: (510) 302-3380 • Fax: (510) 444-8253
www.phlaw.org • info@phlaw.org

Public Health Law & Policy is a project of the Public Health Institute.

This model is provided for general information only and is not intended or warranted as legal advice. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform independent evaluations.

AN ORDINANCE OF THE [CITY / COUNTY] OF [____] REQUIRING NUTRITION INFORMATION MENU LABELING AT CHAIN RESTAURANTS AND AMENDING THE [____] MUNICIPAL CODE

The [City Council of the City / Board of Supervisors of the County] of [____] does ordain as follows:

COMMENT: This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. FINDINGS. The [City Council of the City of / Board of Supervisors of the County] of [____] hereby finds and declares as follows:

WHEREAS, the federal government spends over \$1 billion each year educating consumers about nutrient levels and how to use those levels to determine which foods form a more healthy diet;

WHEREAS, even educated consumers are denied the critical choice to make intelligent food purchases absent relevant nutrient disclosures, as evidenced by the following:

- In a California field poll about the nutritional value of typical fast-food and restaurant menu items, not a single respondent was able to answer all four questions correctly. Less than 1% answered three out of four questions correctly, and only 5% answered two out of four questions correctly. Nearly 68% were not able to answer a single question correctly.

- An FDA-commissioned report concluded that without access to nutritional information, consumers are not able to assess the caloric content of foods.

- One study illustrated that restaurant foods contain almost twice the number of calories estimated by consumers.

Another study showed that trained nutrition professionals consistently underestimate the caloric content of restaurant foods by 200 to 600 calories;

WHEREAS, denying consumers the tools necessary to make informed food purchases undermines and wastes the sustained and expensive efforts to educate consumers,

WHEREAS, obesity is one of the greatest public health challenges facing California, as evidenced by the following:

- Obesity rates have doubled in children and tripled in teenagers over the past twenty years. The rate of childhood obesity is increasing in California and is among the fastest in the country.

MODELL POLICIES

RESTRICTING FOOD AND BEVERAGE ADVERTISING IN PUBLIC SCHOOLS

A Legal Tool for Advocates

A California state law (Education Code section 35162.5) gives parents and educators a powerful tool to influence whether and how foods and beverages are advertised in schools. This fact sheet is designed to help schools, community-based organizations, public health departments, and others better understand the law and use it to help create

LIMITING "JUNK-FOOD" ADVERTISING ON SCHOOL CAMPUSES

A Legal Q&A

Limiting or banning "junk food" advertising in schools is a complicated legal issue. This Q&A is designed to help schools, community-based organizations, public health departments, and others better understand the legal issues involved.

MAXIMIZE YOUR SCHOOL VENDING CONTRACTS

Best Practices

By negotiating strong vending contracts, schools can achieve three primary goals:

- (1) Ensure that their wellness policies are fully implemented.
- (2) Hold food and beverage vendors legally accountable for their promises to provide healthy products and
- (3) Maximize the school's profits from the arrangements.

This fact sheet outlines some key contract provisions to help guide the negotiation process.

Normally, schools must wait until a vending contract is about to expire before they have an opportunity to change the contract terms. But as large food and beverage companies step forward and pledge to work with schools to limit the sale of non-nutritious products on campus, schools across the country may find an unexpected opportunity to renegotiate their vending contracts, regardless of the expiration date.

How can a school turn this chance to re-open its contract into a true opportunity to improve student nutrition? What follows are three best practices to help guide the negotiation process.

Best Practice #1: Control Which Products Are Sold or Advertised

Schools—most vendors—must retain absolute control over the following contract terms:

- Choice of products sold, including the choice not to sell certain products (such as sodas, diet sodas, or sports drinks)
- Number and location of vending machines on school property
- Location where products are placed in the vending machine bins (also called drawer positions)
- Portion size of products (i.e., 12-ounce rather than 20-ounce portions)
- Advertising rights, including the decision to prohibit advertising of all kinds (e.g., vending machine bins, vendor supply signs, sports equipment)

Best Practice #2: Control How Products Are Sold

- Nutritious products (such as milk, 100% juice, and plain water) should be priced lower than non-nutritious options (such as sodas, diet sodas, sports drinks, or flavored waters)
- Commission rates paid for non-nutritious items should not be disproportionately higher than the rates paid for nutritious items, since this could encourage schools to favor the non-nutritious products
- Nutritious products must be kept stocked as consistently as non-nutritious products

Note: The contract should state unequivocally that the primary purpose of the contract is to provide healthy beverages, and that the vendor's failure to deliver these products is a material breach of contract (meaning it is so damaging to the underlying purpose of the contract that the school district would be justified in ending the contract early)

- Schools should ensure that if the vendor stocks a machine with products that are not on their approved-product list, the contract defines that action as a material breach of contract and requires payment of a predetermined amount of money known as liquidated damages

School districts should consider all vending operations on the district level, rather than negotiating contracts school by school. The only meaningful way for schools to increase their negotiating power—and their profits—is to aggregate their students' buying into a consolidated purchasing block and leverage the power that bargaining from a position of such strength can provide.

Best Practice #3: Maximize Financial Benefits

To protect their financial interests, school should:

- Require the vendor to provide accurate, timely, and readily understandable financial reports
- Require the vendor to permit periodic audits of the vendor's books as they relate to the contract
- Give themselves the ability to terminate the contract for cause or if the vendor is financially or otherwise unable to meet its obligations

Contract terms more than a five-year period if new federal, state, or local laws that affect the contract terms. Ensure that the vending machine is the highest standard of energy efficiency (the energy consumption of the machine can be substantially reduced by using energy-efficient models). For real-world examples of how some of these tips have been implemented, see "Making It Happen: Nutrition Services" published by the U.S. Department of Agriculture's National Center and Technical Assistance Center for Healthy Youth Nutrition: Making It Happen.

For technical assistance regarding school vending contracts, contact:

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(510) 302-3353
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This document is provided for general information only and does not constitute a legal opinion. It is not intended to be used as a substitute for legal advice and the advice of a qualified attorney should be sought in any specific situation.



10 WAYS TO LIMIT TOBACCO

TOBACCO CONTROL POLICIES

- 1 Smoke-Free Multi-Unit Housing
- 2 Smoke-Free Indoor Areas
- 3 Tobacco-Free Workplaces
- 4 Tobacco-Free Schools
- 5 Tobacco-Free Public Places
- 6 Tobacco-Free Transportation
- 7 Tobacco-Free Parks and Recreation
- 8 Tobacco-Free Events
- 9 Tobacco-Free Retailers
- 10 Tobacco-Free Advertising

Technical Assistance Legal Center (TALC)

10 Ways to Limit Tobacco in Your Community

Tobacco-related disease kills more than 440,000 people in the United States each year. Beyond that, exposure to secondhand smoke kills more than 50,000 nonsmokers each year. Because of the harmful effects of tobacco, many communities have sought to limit the use, sale, and marketing of tobacco products.

This pamphlet describes ten policy options that a local government can take to limit tobacco in its community, and the accompanying foldout illustration shows what these policy options might look like in a community that has adopted them. The recommendations are designed for a California audience, given that California state law already prohibits smoking in most enclosed workplaces, including bars and restaurants. (See Tobacco Law Affecting California, a guide from TALC, for more information on existing California law regulating secondhand smoke exposure, the sale of tobacco products, tobacco advertising and sponsorship, and more.)

TALC has developed model ordinances and other publications providing guidance for many of the policy objectives described in this booklet. The publications are organized by category on TALC's website at <http://talc.phi.org>. Many communities in California already have adopted ordinances in these areas; contact TALC for information on existing local ordinances.

For additional information and technical assistance on any of these policy options, please contact TALC at (510) 444-4232 or talc@phi.org.

1 SMOKE-FREE MULTI-UNIT HOUSING

- Protect residents of multi-unit housing from drifting smoke
- California state law provides extensive protection from exposure to secondhand smoke in working multi-unit rental housing. Local governments may wish to limit smoking in common areas and individual units to protect renters from smoke drifting into their residences.



California's smoke-free workplace law exempts certain locations—such as hotel lobbies, retail tobacco shops, and owner-operated businesses—from its smoking restrictions. Communities may wish to expand the protections of the state law by passing a local ordinance prohibiting smoking in all indoor areas that are open to

2 SMOKE-FREE INDOOR AREAS

- Supplement the state's smoke-free workplace law
- California's smoke-free workplace law exempts certain locations—such as hotel lobbies, retail tobacco shops, and owner-operated businesses—from its smoking restrictions. Communities may wish to expand the protections of the state law by passing a local ordinance prohibiting smoking in all indoor areas that are open to

TOOLS

General Plans and Zoning

A Toolkit on Land Use and Health

Economic Development and Redevelopment

A Toolkit on Land Use and Health



Zoning

Talking Points

Primary message:

Zoning can promote land uses that allow and encourage individuals to make healthy choices – or it can do just the opposite.

Decisions made about the built



Complete Streets

Talking Points

Primary message:

Complete streets provide people with a range of safe choices for moving around their communities, including walking and biking. Complete streets are people-friendly and support good health.

Health problems include:

Obesity. According to the Centers for Disease Control and Prevention (CDC), 30 percent of U.S. adults are 30 and older are

Zoning divides a city into districts, and determines what can and cannot be built within those districts.



Safe Routes to School

Talking Points

Complete streets that are designed and operated to be safe and accessible for all users, including pedestrians, bicyclists, and motor vehicles, must be able to accommodate all users.

For more information and resources on the relationship between the built environment and public health, visit www.healthplanning.org.

Land Use and Health
c/o Public Health Law Program
180 Grand Avenue, Suite 750
Oakland, CA 94612
(415) 362-3908
www.healthplanning.org



Creating environments that allow children to walk safely to school will improve health outcomes for children.

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Primary Message:

Promoting walking to children builds lifelong healthy habits, and normalizes walking as part of the family's lifestyle. Creating environments that allow children to walk safely to school will improve health outcomes for children, potentially reducing asthma, obesity, and injury rates.

Health problems include:

Obesity. Obesity rates among children have more than doubled in the past 20 years, according to the National Longitudinal Study of Youth. Today, one in five children and one in three teens is overweight or at risk of becoming overweight.

Asthma. Between 1980 and 1994, the prevalence of asthma in the United States increased 74 percent among children ages 5 to 14.

Injuries. In 2002, 599 children ages 14 and younger died from pedestrian injuries, according to Safe Kids USA. Of these, 77 percent died in motor vehicle-related traffic crashes. In 2003, nearly 38,400 children ages 14 and younger were treated in hospital emergency rooms for pedestrian-related injuries.

Some of these health problems are linked to environmental factors.

- The 1996 Surgeon General's Report on Physical Activity and Health reported that 78 percent of children fall short of the recommended minimum of 30 to 60 minutes of physical activity daily and an additional daily recommendation of 20 minutes of vigorous exercise.
- In an October 2002 survey by the Surface Transportation Policy Project, a transportation safety think tank, 71 percent of Americans said they walked or rode a bike to school. Even among kids living within a mile of their schools, only 25 percent are regular walkers.

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TRAININGS

MODEL LOCAL ORDINANCE REQUIRING

SECTION I. FINDINGS. The [City Council of
County] of [] hereby finds and declares

WHEREAS, obesity is one of the greatest public health problems
evidenced by the following:

- Unhealthy diets are a leading cause of chronic diseases in the United States.
- Obesity rates in the United States are among the highest in the world.
- Obesity rates have increased significantly in the past 20 years.
- Between 1990 and 2001, diabetes rates rose 50% in the United States.

WHEREAS, Americans' diets are becoming increasingly unhealthy in the following:

- Only 12% of Americans eat a healthy diet according to the U.S. Department of Agriculture's Healthy Eating Index.





**Agricultural
Law**

Enforcement

**Food
Systems**

**Financial
Systems**

**Marketing
to Children**

**Childcare/
K-12
School
Environment**

**Built
Environment**





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