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

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

## I. Criteria for Requesting Ordinance Documents

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

## . Analysis Procedures

- A. Based on results of review of the research literature,<sup>1-4</sup> 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 the website reports 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

Five aspects of municipal ordinances used in one or more reports are defined and/or scoring criteria are described below: A) ordinance background, B) focal settings where smoking is restricted; C) protection level for focal settings; D) setting details; and E) provisions for enforcement and penalties. Each will be briefly described below.

- A. **Ordinance Background.** 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 for tracking changes in the proportion of the state population protected from exposure to SHS smoke.
  - *Passage date* refers to the day, month, and year of the most recent ordinance 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 supersedes, amends, or replaces the prior one. Reports on the website present results only for *current* ordinances.

**B. Focal settings with SHS protections.** Ordinances vary in their definitions of public places, as do methods of implementing protection against SHS in these locations. Because of these variations, comparing across settings and communities can be difficult. To assist in examination, the following categorizations of focal settings are used for review and analysis on this website:

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

The term *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. If the ordinance makes no distinction between restaurant bars 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.

Commercial and home-based child-care are not included as focal settings in reports on the 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 child-care settings may be provided upon request.

Because ordinances vary in definitions of “public places,” when an ordinance states a uniform standard (e.g., smoke-free) for all public settings, restaurants and bars are so classified, barring other restrictions or exemptions in the ordinance. However, when the definition of public places specifically indicates other settings but contains no references to restaurants or bars, they will not be scored as covered.

**C. Ratings of protection levels for focal settings.** For each setting, a rating and a descriptor are assigned to indicate the extent to which the ordinance helps to protect from SHS exposure.

Rating	Descriptor	Criteria
5	100% Smoke Free	No smoking allowed in the stated setting
4	Moderate	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 the stated setting, even if an SHS ordinance exists.

**D. Setting Detail.** Additional provisions are described that influence SHS protection in the focal settings.

**1) Worksites**

- *Exemption for a minimum number of employees* – The minimum number of employees at a worksite 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.
- *Nonsmoker’s 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 have 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.

## 2) Restaurants

- *Exemption for minimum seating* – The 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* – See worksites (above).

## 3) Bars

- *Definition by percent of sales of alcohol* is a frequently used criterion for defining and/or exempting bars from smoking restrictions in a municipal ordinance. The summary and individual municipality reports identify by "yes/no" statements whether bars are defined based on percent of gross annual sales of alcoholic beverages. While some ordinances use percent of sale of alcohol as a criteria to define and/or exempt bars from smoking restrictions, other ordinances may completely exempt bars from smoking restrictions or may address them directly or indirectly in their definition of public places, but not include provisions in the text for their exemption or coverage. This information is available for individual municipalities upon request.
- *Age restrictions* for ordinances that cover bars are scored “yes,” if applicable. 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.

## 4) Radius from outside doors.

The ordinance explicitly exempts and/or restricts smoking outside the doors of a restricted facility. The *distance in feet*, if specified, also is recorded.

**E. Enforcement and Penalties.** The presence of an enforcement authority or penalty is scored “yes” if the ordinance specifies the following:

- *Enforcement authority* – A specific agency, department, office, or individual designated 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* – A fine or other penalty to the business and/or to the smoker for violation of the ordinance. The amount of fine, if any, for first violation is recorded. 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

Analyses of the ordinances are combined with demographic information about the municipalities obtained from the Office of the State Demographer and the Texas Department of State Health Services to generate reports at two levels: A) Individual Municipalities and B) Summaries Across Multiple Municipalities. Only current SHS ordinances with at least one of the five focal settings specifically stated are included in summary reports that span multiple municipalities.

All population data is derived from the 2005 Estimated Census. Minority percentage data is derived from data from the U.S. 2000 Census.

### A. Reports for Individual Municipalities

- *Summary profile* – If a municipality’s current ordinance specifically states at least one of the five focal settings, a profile is provided covering ordinance background, protection level by setting, setting details, and enforcement and penalties. A brief narrative summary of the ordinance is included at the end of this report, including the direction of changes made from earlier ordinances.
- *Current ordinance text* – The document obtained from the given municipal ordinance that has smoking or tobacco restrictions is scanned into the database. It can be viewed in its entirety at this location. 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 available for review.
- If a municipality has supplied a document for review and analysis, but that document does not meet criteria for a full summary profile, a very brief summary statement is provided on the website to indicate the category by which that ordinance is classified. Classifications include:
  - 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 of examination of the text of each individual municipality’s ordinance.

### B. Summary Reports Across Multiple Municipalities

- *Summary Profile* – Ordinances with at least one of the five focal settings specifically stated are used in summary reports. The summary reports provide aggregate information in the same categories included in individual municipality reports. Percent of municipalities with various ordinance features is based on the number of

municipalities in the selected scope (State, one or more Public Health Regions or Counties). The total number of municipalities in each report is included in each report title.

- *Most Protected Municipalities* –Texas municipalities with two or more protection level ratings of *Smokefree* (5) or *Moderate* (4) are listed. Ratings across the five focal settings are presented in the report, as well as key demographic characteristics of the municipalities.
- *Municipalities Sortable by Protection Level and Other Descriptors* – Reports may be customized to emphasize municipalities by Protection Level in any of the five focal settings, population size, percentage minority population, public health region, county, and/or passage date. The order in which the municipalities are listed can be sorted as ascending or descending on each of the columns of interest.
- *Ordinance Narrative Summaries*. Descriptive information of individual ordinances may be viewed by the report scope of choice: Statewide, Public Health Region, or County. Because municipalities may span multiple counties, 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). The number of ordinances in each report is cited at the top of that report.

The groupings in the summary reports pertaining to restaurants, radius, worksites, enforcement and penalties are independently scored; no grouping totals should be inferred.

## 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](http://www.no-smoke.org)
4. Chriqui J, Frosh M, Brownson R, Shelton D, Sciandra R, Hobart R, Fisher P, el Arculli R, Alciata M (2002). Application of a rating system to State clean indoor air laws (USA), *Tobacco Control*, 11:26-34.

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