Identifying and Revising Problematic Language in Texas Municipal SHS Ordinances

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Learning Objective: At the end of the presentation, attendees will be able to identify and amend certain types of language in second-hand smoke (SHS) ordinances that inadvertently weaken the ordinances’ strength.

Abstract: In response to a request by the Texas Department of Health for analysis of municipal-level SHS ordinances across the state, review revealed circumstances in which exceptions – whether intentional or inadvertent - undercut the ordinance’s strength significantly. Using a rating scale assigning a numerical score -1 (no regulation) through 5 (100% smoke-free) – to SHS ordinances, raters identified notably ambiguous provisions in otherwise strong ordinances from among the 285 collected in the Texas Tobacco Prevention and Control Research and Evaluation Project. Those provisions were evaluated to determine their likely legal effect and how best to eliminate ambiguities and unintended holes in coverage. We also evaluated weaker ordinances that deliberately or inadvertently undercut their protections. Exceptions to the otherwise strong ordinances appeared carefully and deliberately crafted, usually with respect to restaurants or workplaces. Weaker ordinances containing language further undercutting the strength of their provisions often also contained deliberate exceptions, yet sometimes instead contained what appear to be inadvertent drafting errors. Guidelines will be provided for recognizing and modifying problems. It is recommended that a trained attorney review proposed SHS ordinances or their amendments prior to the ordinances’ consideration, and that state provisions be made for an attorney to review proposed SHS ordinances or amendments prior to submission. (e.g., Massachusetts Model). Also, education and training for those involved in drafting, championing and later scoring ordinances may prepare them to minimize linguistic considerations which can limit ordinance strength.