



# Drafting Effective Public Health Policies

## October 5, 2011

# How to Use Webex



If you can hear us through your computer, you do not need to dial into the call. Just adjust your computer speakers as needed.



If you need technical assistance, call Webex Technical Support at 1-866-863-3904.



All participants are muted. Type a question into the Q & A panel for our panelists to answer. Send your questions in at any time.



This webinar is being recorded. If you arrive late, miss details or would like to share it, we will send you a link to this recording after the session has ended.

# Public Health Policy Change Webinar Series

- Providing substantive public health policy knowledge, competencies & research in an interactive format
- Covering public health policy topics surrounding Tobacco, Obesity, School and Worksite Wellness, and more
- Two Wednesdays a month from 12:00 p.m. to 1:30 p.m. Central Time
- Visit <http://publichealthlawcenter.org/> for more information

# Introductions

## Natasha Frost

Staff Attorney, Public Health Law Center





# Introductions

## Debbie Hornor

Community Obesity Policy Manager,  
American Heart Association



# Introductions

**Mary Marrow**

Staff Attorney, Public Health Law Center



# Introductions

## Warren Ortland

Staff Attorney, Public Health Law Center,  
Tobacco Control Legal Consortium



# Drafting Effective Public Health Policies

## Webinar Objectives

- Learn what makes public health policies effective
- Recognize and respond to challenges in policy drafting
- Learn about available policy drafting tools





American Heart Association® | American Stroke Association®  
*Learn and Live.*

## Our 2020 Impact Goal

*“By 2020, to improve the cardiovascular health of all Americans by **20 %** while reducing deaths from cardiovascular diseases and stroke by **20 %**.”*

# American Heart Association

- ❑ Founded in 1924 by Drs. Lewis A. Connor and Robert H. Halsey of New York; Paul D. White of Boston; Joseph Sailor of Philadelphia; Robert B. Preble of Chicago and Hugh D. McCulloch of St. Louis.
- ❑ Since 1949, the AHA has spent more than \$3.3 billion on research to increase our knowledge about cardiovascular diseases and stroke.
- ❑ The AHA currently funds about 2,500 scientists around the United States.
- ❑ The AHA is second only to the federal government in funding cardiovascular and stroke research

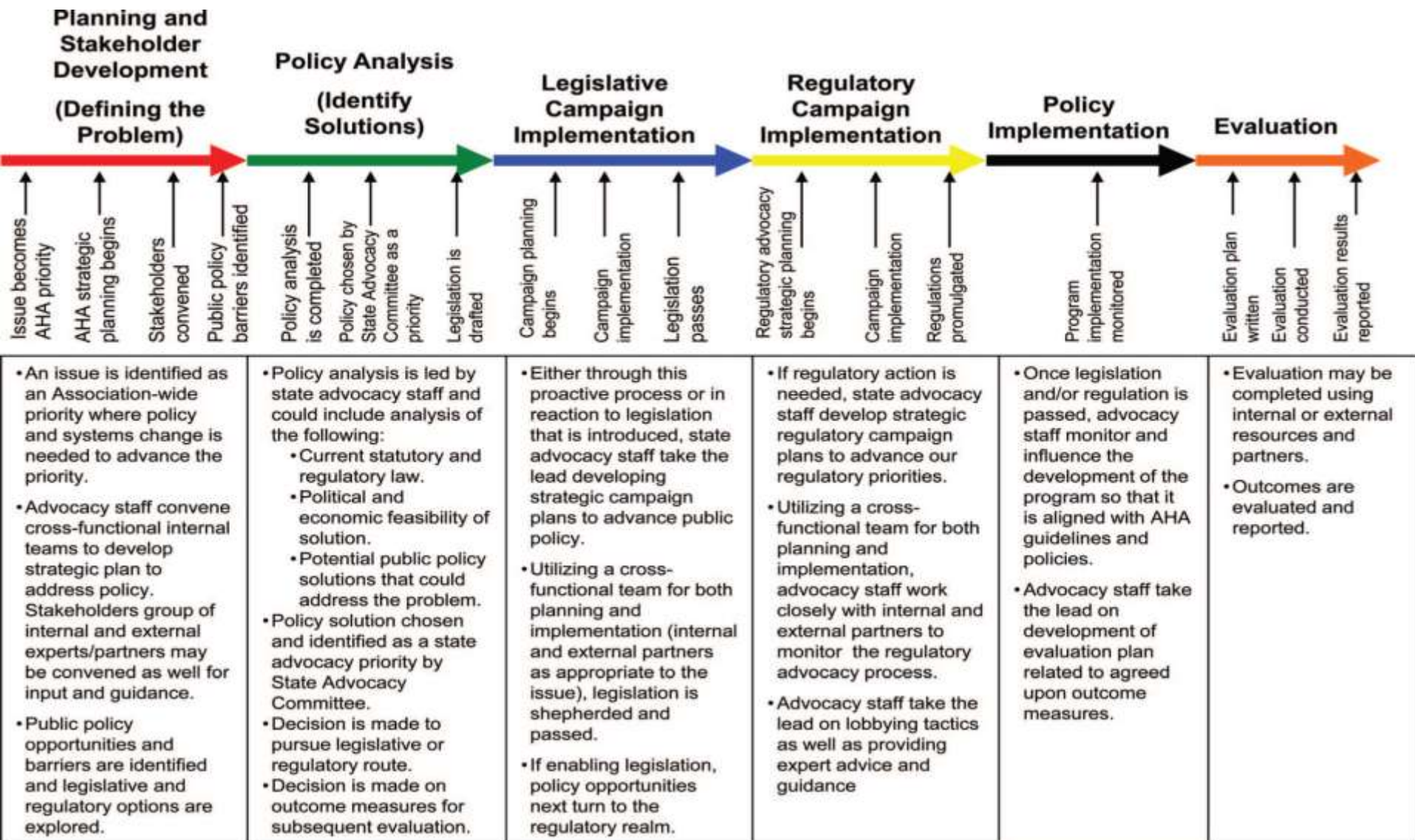
# American Heart Association

- ❑ Founded in 1924 by Drs. Lewis A. Connor and Robert H. Halsey of New York; Paul D. White of Boston; Joseph Sailor of Philadelphia; Robert B. Preble of Chicago and Hugh D. McCulloch of St. Louis.
- ❑ Since 1949, the AHA has spent more than \$3.3 billion on research to increase our knowledge about cardiovascular diseases and stroke.
- ❑ The AHA currently funds about 2,500 scientists around the United States.
- ❑ The AHA is second only to the federal government in funding cardiovascular and stroke research

# American Heart Association

- ❑ Our research programs have contributed to many important scientific advances, including the first artificial heart valve, techniques and standards for CPR, implantable pacemakers, treatment for infant respiratory distress syndrome, cholesterol inhibitors, microsurgery.
- ❑ The AHA has funded the winners of 11 Nobel Prizes.
- ❑ Early 1980's – Focused efforts to translate the science of cardiovascular disease and stroke into meaningful public policy.

# American Heart Association





# American Heart Association

## Advocacy Nutrition Opportunities

- ☐ Menu labeling in restaurants
- ☐ Nutrition standards in schools (competitive foods and school meals)
- ☐ Procurement standards for foods purchased by employers and government agencies
- ☐ *Trans* fat bans in restaurants and schools
- ☐ Farm-to-school programs, community/school gardens
- ☐ Local school wellness policies

# American Heart Association

## Advocacy Physical Activity Opportunities

- ☐ **PE in Schools** – Frequency and Quality Standards
- ☐ Safe Routes to Schools
- ☐ Shared use agreements that allow community groups to use schools' physical activity facilities when school is not in session
- ☐ Creating Walking Trails/Bike Paths/Recreational spaces

# The Public Health Law Center



# The Public Health Law Center

Services include:

- ☐ Legal research
- ☐ Policy development
- ☐ Publications
- ☐ Training



# Tobacco Control Legal Consortium

## A national legal network supporting tobacco control policy change

Public health advocacy organizations and community coalitions

Public health officials

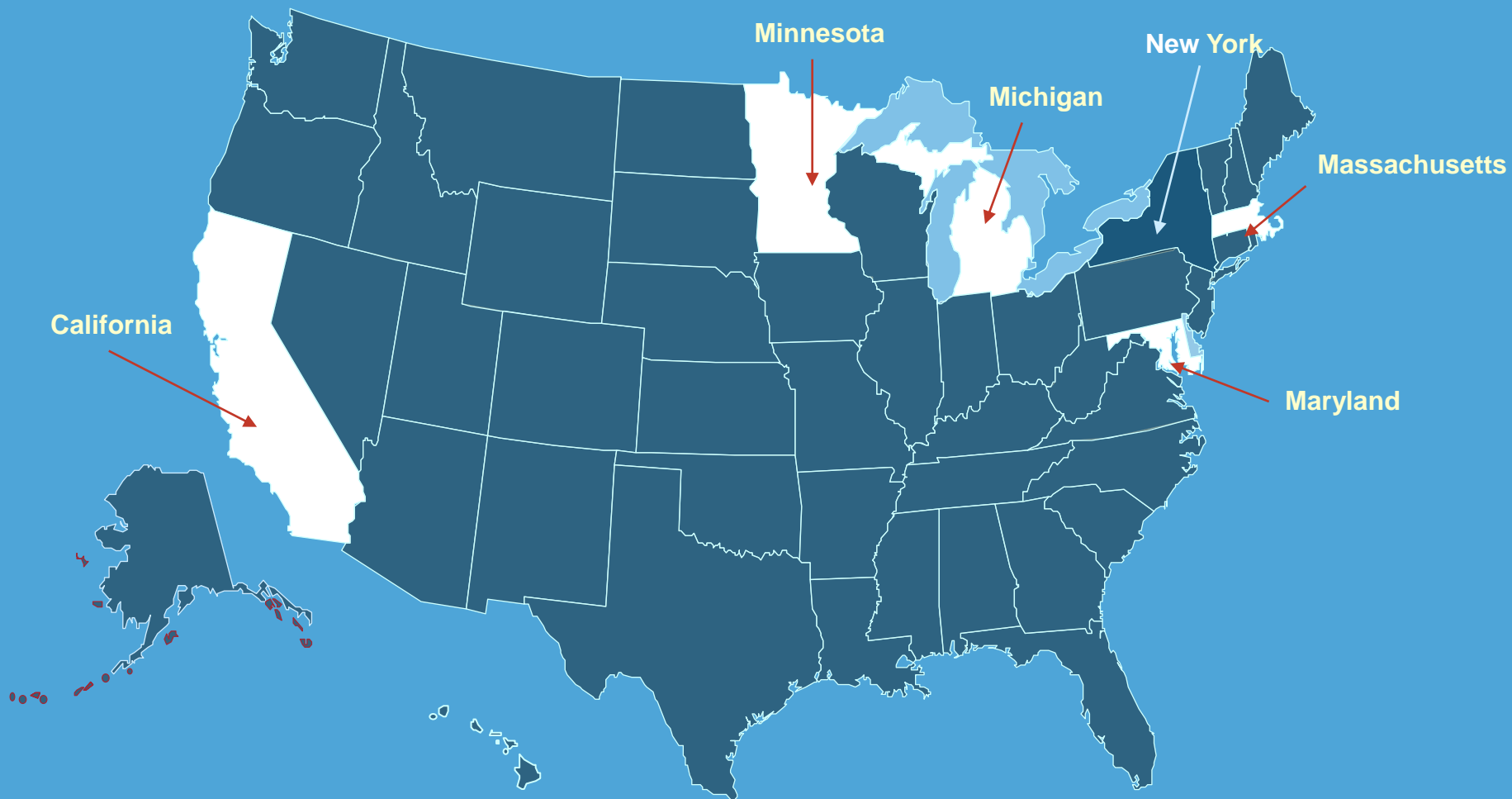
Elected officials

City and county attorneys

Private attorneys and individual citizens



# Tobacco Control Legal Consortium



# Drafting Effective Public Health Policies

What is a policy?

- ❑ Any plan or course of action designed to influence and determine decisions



# Drafting Effective Public Health Policies

What is an effective policy?

- ❑ Written
- ❑ Easy to understand and follow
- ❑ Able to enforce
- ❑ Accomplishes goals



# Essential Policy Elements

- ☐ Findings
- ☐ Purpose
- ☐ Definitions
- ☐ Restrictions/requirements
- ☐ Exemptions
- ☐ Implementation
- ☐ Enforcement
- ☐ Severability



# Essential Policy Elements: Findings

Whereas, fear of liability among school administrators is a key perceived barrier to allowing community access to school sport and recreational facilities after-hours.

Spengler JO, Connaughton DP, Maddock JE. Liability concerns and access to school recreational facilities in underserved communities. *Am J Prev Med* 2011;41(4):415– 420





# Essential Policy Elements: Purpose

The purpose of this legislation is to make school property available to community members outside of the school day for recreational activities to support active living, reduce obesity, reduce health care costs associated with obesity, increase community safety, maximize community resources, and promote community support for public schools.

**Proposed American Heart Association Model  
School Recreational Use Statute**

# Essential Policy Elements: Findings

## BACKGROUND

The City of Chula Vista recognizes community gardens as a valuable recreation activity that can provide community members access to fresh, nutritious produce, and low-intensity physical activity. Community gardens can also foster environmental awareness, positive social interaction, and community education, all while bringing added food security to the community through the development of local food sources. The City has the ability to foster the creation of community gardens by permitting the establishment of such gardens on its vacant lands.

**City of Chula Vista, California, Community Gardens Policy**



# Essential Policy Elements: Purpose

## PURPOSE

This policy provides to the City Manager or his designee the authority and guidance to implement and approve the use of city-owned vacant land, not including parks, to establish community gardens. This policy further details the procedure and requirements for the establishment of community gardens on city-owned vacant land.

**City of Chula Vista, California**  
**Community Gardens Policy**



# Essential Policy Elements: Definitions

Soft drinks means “nonalcoholic beverages that contain natural or artificial sweeteners.” Soft drinks “do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.”

**Colorado legislation in 2010 (now repealed)**



# Essential Policy Elements: Definitions

“Food containing trans fat” means, except as provided in paragraph (2) of this subsection, any food that: (i) is labeled as containing vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil; (ii) lists vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil as an ingredient; or (iii) contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil.

**Council Bill 08-0034, § 6-507. TRANS FATS**

**Baltimore, Maryland**



# Essential Policy Elements: Restrictions / Requirements

## Restrictions:

Tobacco products shall not be distributed in vending machines...

## Requirements:

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age.

North Carolina Code - General Statutes § 14-313.  
Youth access to tobacco products.



# Essential Policy Elements: Requirements

Employees approved for participation in the Wellness Program shall receive a maximum of 30 minutes release time per day for approved wellness activities on the Sam Houston State University campus only. Release time may not be granted for participation in wellness activities off the Sam Houston State campus. Release time is paid time and does not have to be made up. For documentation and tracking purposes, employees will check in/out at the Recreational Sports facility using their university I.D. when participating in the program. Participation reports will be available upon request.

Sam Houston State Worksite Wellness Policy



# Essential Policy Elements: Exemptions

(I) IN GENERAL.—Subclauses (i) through (vi) do not apply to...(bb) daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, or custom orders...



21 U.S.C. § 343(q)(5) (H) (vii) (2010).

# Essential Policy Elements: Implementation

## Complete Streets



“The City will develop implementation strategies that may include evaluating and revising manuals and practices, developing and adopting network plans, identifying goals and targets, and tracking measures such as safety and modal shifts to gauge success.”

**Byron, Minnesota Resolution, October 2010,**  
<http://www.completestreets.org/webdocs/policy/cs-mn-byron-resolution.pdf>

# Essential Policy Elements: Implementation

## Support for Nursing Mothers in the Workplace

**“Staff Support:** Supervisors are responsible for alerting pregnant and breastfeeding employees about the county’s worksite lactation support program, and for negotiating policies and practices that will help facilitate each employee’s infant feeding goals. It is expected that all employees will assist in providing a positive atmosphere of support for breastfeeding employees.”

**Le Sueur County, Minnesota  
Lactation/Breastfeeding Policy**





# Essential Policy Elements: Enforcement

The Healthy Options Coordinating Committee shall review the findings of an assessment and inventory of beverage points of purchase and distribution subject to the Healthy Options Beverage Standards, including an analysis of existing contracts and policies, the results of which will be distributed to City departments along with other resources to assist with the implementation of this order.

**Boston Order Relative to Healthy Beverage Options**



# Essential Policy Elements: Severability

If any provision of this chapter, or the application of any such provision to any person or circumstances is held to be invalid, the remainder of this chapter, and the application of such provision or amendment to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.



**United States Code 42: The Public Health and Welfare, 42 USC 11714 - Sec. 11714. Severability**

# Drafting Effective Public Health Policies

## “Do’s”

- ✓ Written
- ✓ Clear & concise
- ✓ Consistent
- ✓ Practical
- ✓ Anticipate Challenges





# Written

- ❑ Compliance
- ❑ Uniformity
- ❑ Enforceability
- ❑ Sustainability





# Clear and Concise

- ❑ Use definitions appropriately
- ❑ Eliminate unnecessary words
- ❑ Keep language simple
- ❑ Be precise



# Clear and Concise: Use definitions appropriately

## 1.12 DEFINITIONS AND RULES OF CONSTRUCTION

- *Following.* The term "following" means next after
- *Month.* The term "month" means a calendar month
- *Property.* The term "property" includes real property, personal property and **mixed** property.







# Clear and Concise: Eliminate Unnecessary Words

(E) Owners, managers, operators, or employees of establishments regulated by this Ordinance shall inform persons seen violating this Ordinance of the requirements of this Ordinance. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked. Failure of the person directed to extinguish his/her item shall result in the violator being directed to leave the premise.

1. In the event the person [or persons] violating this Ordinance complies with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance and fails to immediately direct the person [or persons] in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.

2. In the event the person [or persons] violating this Ordinance fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person [or persons] violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person [or persons] from the premises. As an example of the reasonableness required, if there is a person violating the ordinance who, the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee reasonably determine to allow the person violating this ordinance to remain on the premises until appropriate arrangements may be made for the person's removal.

In the event the person [or persons] violating this Ordinance is timely removed from the premises; no violation shall exist for any owner, manager, operator or employee related to the establishment in which these events occurred. In no event is an owner or agent of the premises to forcibly remove the person violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises orders the person violating the Ordinance to leave its premises and promptly notifies the police if the person refuses.

If an owner, manager, operator, or employee of an establishment regulated by this Ordinance observes a person[s] violating this Ordinance, he or she shall immediately ask the person[s] in violation to stop smoking. If the person[s] violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall immediately ask the person[s] to leave the premises. If the person[s] in violation refuses to leave the premises, the owner, manager, operator, or employee shall call the police or other appropriate enforcement agency.

In no event is an owner or agent of the premises to forcibly remove the person[s] violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises follows these steps.

An employee who observes a person[s] violating this Ordinance may immediately notify the owner, manager or supervisor of the violation in satisfaction of the employee's responsibility under this Ordinance. The failure of the owner, manager, or supervisor to take the steps required by this subsection in response to the employee's notice shall not constitute a violation on the part of the employee.



## Clear and Concise: Keep Language Simple

(b) Date Described- The date described in this subsection is the first day of the first fiscal quarter following the initial 2 consecutive fiscal quarters of fiscal year 2010 for which the Secretary of Health and Human Services has collected fees under section 919 of the Federal Food, Drug, and Cosmetic Act (as added by section 101).

*Family Smoking Prevention and Tobacco Control Act (2009)*



# Clear and Concise: Be Precise



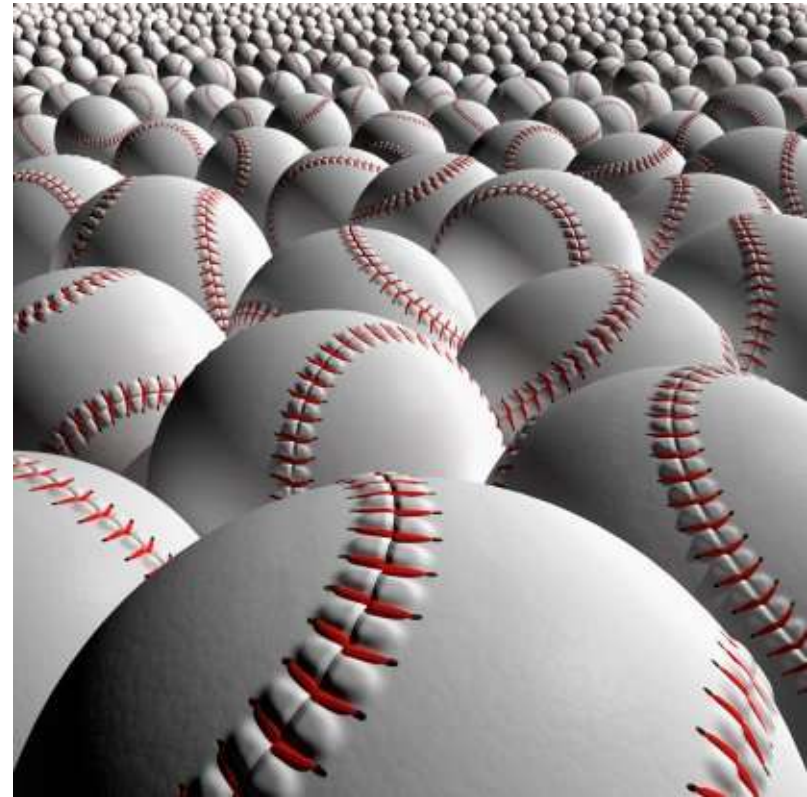
## Tobacco

- ❑ “the term tobacco includes, but is not limited to, any form, compound, or synthesis of the plant of the genus *Nicotiana*, or the species, *N. Tabacum*”



# Be Consistent

- ❑ Focus on policy objectives
- ❑ Within a specific policy
- ❑ Within an organization
- ❑ External





## Be Consistent: Focus on Policy Objectives

The Board of Sample Homeowners' Association adopts the policy below to protect the residents of the association from the health risks of exposure to secondhand tobacco smoke.

The policy is also adopted to prevent the risks of injury to residents from fires associated with smoking.



## Be Consistent: Within a Specific Policy

All grocery stores licensed under this chapter must offer for sale food for home preparation and consumption, on a continuous basis, at least three (3) varieties of qualifying, non-expired or spoiled, food in each of the following four (4) staple food groups, with at least five (5) varieties of perishable food in the first category and at least two (2) varieties of perishable food in all subsequent categories:

- (1) Vegetables and/or fruits.
- (2) Meat, poultry, fish and/or vegetable proteins.
- (3) Bread and/or cereal.
- (4) Dairy products and/or substitutes.





# Be Consistent: Within an Organization

## Enforcement steps for employees

### Staff

- i. The first violation shall result in a verbal warning to the staff member, and an offer of a referral to cessation services.
- ii. The second violation shall result in a written warning to the staff member with a copy placed in his or her district personnel file, and an offer of referral to cessation services.
- iii. The third violation shall be considered insubordination and shall be dealt with accordingly based on established policies and procedures for suspension and/or dismissal of staff.



## Be Consistent: External

“A local ordinance or other rules, laws, or policies adopted under this section may not restrict or prohibit smoking in the following places:

- A private residence”

**North Carolina Statutes, sec. 130A-498(b1)**



# Be Practical

- ☐ Know your community
- ☐ Cost
- ☐ Effective dates
- ☐ Ability to follow policy





# Anticipate Challenges

- ☐ Political
- ☐ Bureaucratic
- ☐ Legal





# Anticipate Challenges: Legal

- ☐ Liability Issues
- ☐ Equal Protection
- ☐ Due Process



# Drafting Effective Public Health Policies

## “DON'Ts”

- ✓ don't forget your homework
- ✓ don't draft by “Xerox<sup>®</sup>”
- ✓ don't draft in isolation
- ✓ don't misuse exemptions







# Don't Forget Your Homework

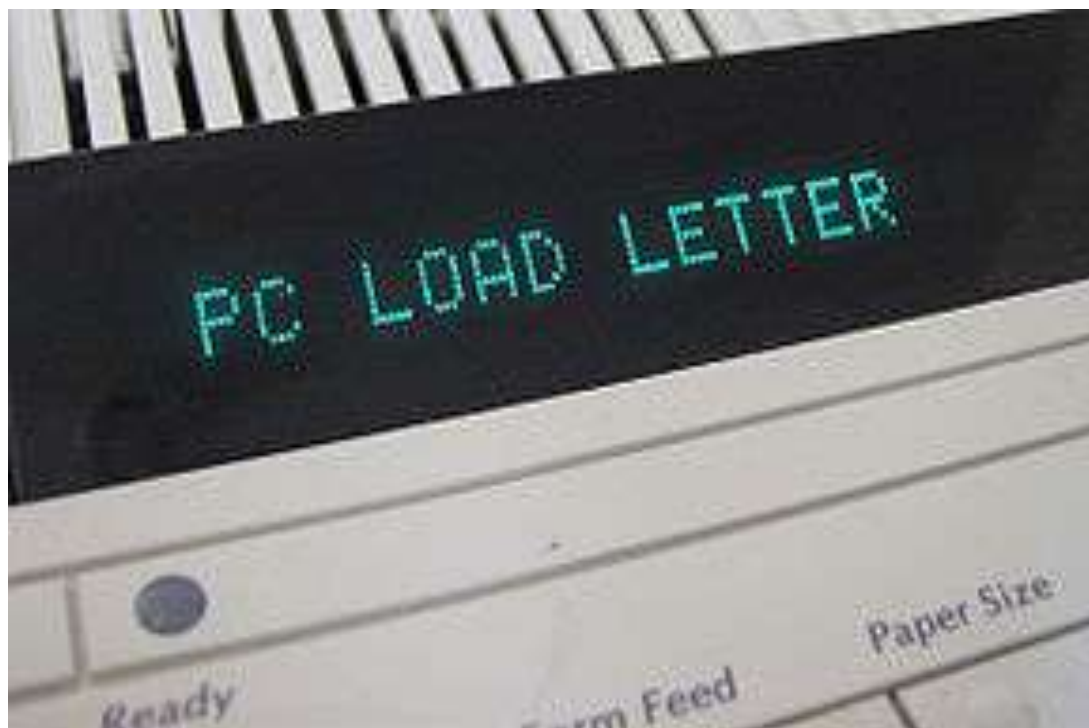


- ☐ Involve stakeholders
- ☐ Review sample policies
- ☐ Involve legal assistance
- ☐ Identify deal breakers



# Don't Draft by Xerox®

Don't simply do what's been done before –  
it may not work for you





# Don't Draft in Isolation





# Don't Draft in Isolation

You are not alone

- ☐ Stakeholders
- ☐ Legal assistance
- ☐ Other grantees



Your policy is not an island

- ☐ Existing laws & policies
- ☐ Local, state and national trends



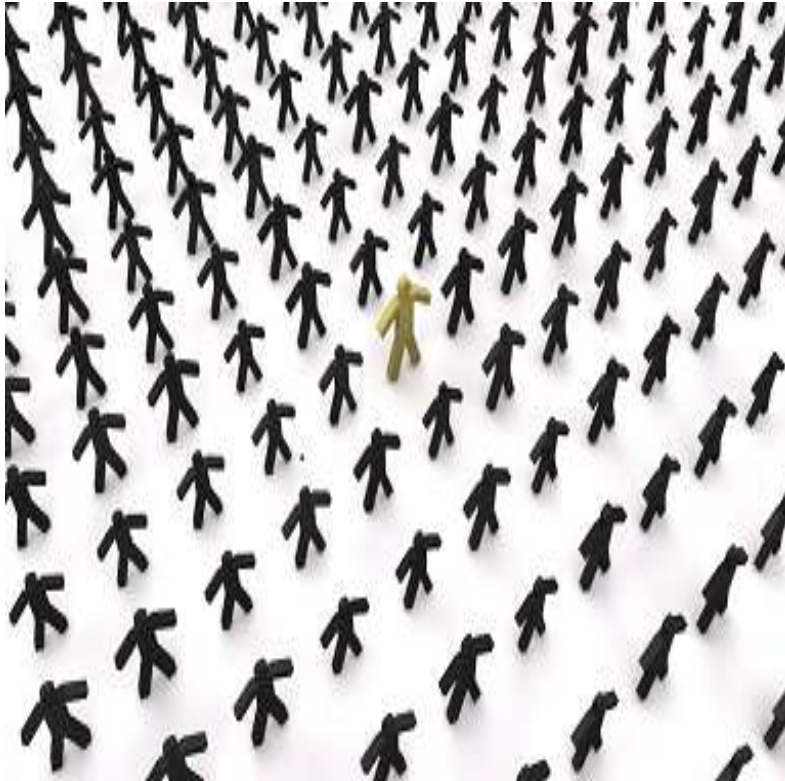
# Don't Overuse Exemptions







# Don't Overuse Exemptions



- ☐ Weaken objectives
- ☐ Make interpretation, implementation & enforcement difficult
- ☐ Inspire challenges



# Drafting Effective Public Health Policies

## Checklists



### POLICY DRAFTING CHECKLISTS

July 2018

Drafting effective public health policies is a critical component of achieving policy, systems and environmental change. The purpose of the following checklists is to provide useful tools to assist in the policy drafting and review process. The first checklist contains the steps in policy planning and drafting. The second checklist contains the elements that should be included in a policy. The final checklist contains questions for review of the policy to ensure that it is effective and comprehensive. Not every item will be relevant to every policy, but all should be considered. The order in which each item is carried out may vary and some items may need to be repeated.

#### Policy Planning / Drafting Process Checklist

This checklist contains the steps that should be used to plan for a policy, to develop the policy and ensure effective implementation.

Identify and clarify the issue that the policy is addressing
Determine if the organization has authority to enact the policy
Identify person(s) responsible for drafting the policy
Identify and involve key stakeholders
Identify sample or model policies
Draft policy (see Policy Elements Checklist)
Review policy (see Policy Review Checklist)
Check for conflicts with existing policies or laws
Review draft policy with stakeholders
Review draft policy with legal counsel or legal technical assistance
Review and finalize policy
Complete the approval process for the policy
Publish and implement the policy

#### POLICY DRAFTING CHECKLISTS

##### Policy Elements Checklist

This checklist contains the elements of an effective policy. The scope of each section will depend on the nature of the policy.

##### Findings

Findings are brief statements of fact and/or statistics that outline the issue being addressed and support the need for the policy.

##### Purpose

The purpose is a statement that explains the goal(s) the policy is intended to achieve.

##### Definitions

The definitions are detailed explanations of the key terms in the policy.

##### Main policy provisions

The main policy provisions state the prohibitions and/or requirements of the policy and identify the parties to whom the provisions apply.

##### Exceptions / Exemptions

This section contains any exceptions or exemptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy.

##### Enforcement

The enforcement section identifies the parties responsible for enforcement, outlines the enforcement procedures, any penalties or fines that may be imposed, and any appeal process.

##### Implementation

The implementation section states the effective date for the policy and the steps to disseminate and publicize the policy.

#### POLICY DRAFTING CHECKLISTS

##### Policy Review Checklist

This checklist should be referred to throughout the policy development process to ensure that the policy is comprehensive, understandable and will achieve the policy goals.

##### Structure

Are all the key elements included?  
Are the elements in order?

##### Findings

Are the findings evidence-based?  
Do the findings support the purpose of the policy?  
Do the findings structure challenges?

##### Purpose

Does the purpose explain the goal(s) of the policy?

##### Definitions

Are all the key terms defined?  
Are any ambiguous terms defined?  
Do the definitions anticipate new concepts or products?

##### Main Policy Provisions

Are all the requirements and prohibitions covered?  
Do the provisions address the purpose?  
Are the provisions consistent with other policies and laws?  
Are the provisions clearly stated?  
Is it clear who the policy applies to?

##### Exceptions

Are the exceptions or exemptions listed and written as narrowly as possible?

##### Enforcement

Does the policy state who is responsible for enforcing the policy?  
Does the policy state the consequences for violating the policy?  
Does the policy explain any appeal procedures?

##### Stylistic Considerations

Are the same terms used for the same concepts consistently throughout the policy?  
Is the policy clear and concise?  
Is the tone consistent?  
Is the pronoun consistent?  
Is active voice used throughout?



For related publications, visit  
[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)

Next webinar in the series

**Promoting Recreational Use of School  
Property After-Hours**

**October 19<sup>th</sup>, 12:00 -1:30 p.m. Central**

More information at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)

# Drafting Effective Public Health Policies

## Questions & Answers

publichealthlaw@wmitchell.edu

[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)

The screenshot shows the homepage of the Public Health Law Center. At the top left is the logo, a red flame-like shape, with the text "Public Health Law Center" and "at WILLIAM MITCHELL COLLEGE OF LAW" below it. To the right of the logo is the tagline "Improving health through the power of law" in a script font. Below the logo is a search bar with a "GO" button. To the left of the main content area is a sidebar with a "We welcome your feedback!" message, a list of links (About Us, Our Staff, Programs, Publications and Resources, Public Health Law at William Mitchell, Contact Us), and an "EMAIL NEWSLETTER SIGNUP" form with fields for NAME, ORGANIZATION, and E-MAIL. Below the form are icons for a building, a gavel, a scale, and a handshake, and a "Click the pad to submit" button. At the bottom left is an "ADMIN LOGIN" section with a "Username:" field. The main content area features a large image of five children running in a park. Overlaid on the right side of this image is the text "Active Living" and "Policy tools and legal resources to promote physical activity in safe accessible environments". Below the image is a horizontal navigation bar with six colored buttons: "Healthy Eating" (green), "Active Living" (orange), "Tobacco Control" (brown), "Public Health Law Basics" (yellow), "Other Public Health Law" (red), and "Public Health Law Network" (blue). Below the navigation bar is a section titled "Announcement" with a sub-header "New Publications" and "Public Health Blog". The main announcement is titled "Taxing Sugar Drinks: A Tool for Obesity Prevention, Cost Savings and Health Improvement" and features an image of four bottles of sugary drinks. The text describes two new resources published by the center: "Taxing Sugar Drinks: A Tool for Obesity Prevention, Cost Savings and Health Improvement" and "Taxing Sugar Drinks: A Policy Overview". To the right of the announcement is a "NEWS" section with a link to "Free Tobacco Cessation Resources" and a "Read more" link. At the bottom right is an "EVENTS" section with a link to "Public Health Policy Change: A Webinar Series".