"The Strictest Smoking Ban In The Nation": A Retrospective Case Study Of The Political Factors That Facilitated And Inhibited The Passage Of El Paso's Clean Indoor Air Ordinance

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“THE STRICTEST SMOKING BAN IN THE NATION”: A RETROSPECTIVE CASE STUDY OF THE POLITICAL FACTORS THAT FACILITATED AND INHIBITED THE PASSAGE OF EL PASO’S CLEAN INDOOR AIR ORDINANCE

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Interim Dean of the Graduate School
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By

Xochiquetzalli Gamboa

2012
DEDICATION

This publication is dedicated to my mother, Hermila Ramos Kruhalski. On my first day of preschool she gave me hug, told me to go inside, sit down, be quite, and pay attention to the teacher. Over the course of my education her sage advice, faith, unwavering love and support have always been the beacons of light through difficult personal circumstances. She sacrificed continuing her own education to support my two sisters and me as a single parent. I hope that my accomplishments have honored her sacrifices as they would not have been possible without her. I also hope my son, Alejandro Hermilo Gamboa, will always be inspired by his grandmother’s resilience and achieve great milestones in his education and in life.
“THE STRICTEST SMOKING BAN IN THE NATION”: A RETROSPECTIVE CASE STUDY OF THE POLITICAL FACTORS THAT ENABLED THE PASSAGE OF EL PASO’S CLEAN INDOOR AIR ORDINANCE

By

Xochiquetzalli Gamboa, BS, CHES

Thesis

Presented to the Faculty of the Graduate School of The University of Texas at El Paso in Partial Fulfillment of the Requirements for the Degree of

MASTER OF PUBLIC HEALTH

Department of Public Health Sciences THE UNIVERSITY OF TEXAS AT EL PASO

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ABSTRACT

The purpose of this report is to describe, using archival print media sources, the factors that influenced the passage of the controversial El Paso Clean Indoor Air Ordinance in 2001. Although public health professionals had had more than 50 years of evidence proving the dangers of tobacco consumption, very few municipalities were concerned with implementing bans of any type on indoor smoking in public places ten years ago.

El Paso, TX, made national history when it introduced and approved what was then called “the strictest smoking ban in the nation” (Falgoust, 2004). How was such a progressive measure enacted in El Paso so much earlier than other cities in Texas and in the United States? Moreover, if there were no other “comprehensive” ordinances in place in the Paso del Norte border region in 2001, how did El Paso develop theirs? What brought about the need to enact such a strict local policy?

Although an existing case study provides a chronological account of the events that lead to the passage of the ordinance, this resource does not provide a clear understanding of the social, cultural and political factors that influenced its passage. Accordingly, this report analyzes these factors as evidenced through 191 regional newspaper accounts and associated documents detailing the ordinance enactment. The main factors included: 1.) an organized coalition 2.) a liberal ideology, 3.) public support, 4.) media attention, 5.) personal experience, 6.) knowledge of research, and 7.) fiscal implications. This study provides insight into factors that enhance or impede municipal level public health policy in general, and specifically in regard to smoking. Advantages and disadvantages of the methodology are also discussed.
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Table 4.1: Summary of Factors that Influenced the Passage of the El Paso Clean Indoor Air Ordinance on June 26, 2001

15
PREFACE

The idea for this research project was originally conceived in 2008 when I was an employee of the American Cancer Society and a member of the Smoke Free Horizon City and Smoke Free Clint Coalitions. A personal feeling of disappointment lingered after several months of grassroots advocacy efforts in both municipalities failed to result in the adoption of comprehensive smoke free ordinances in those communities.

In hindsight, confidence in the wording of the El Paso Ordinance as a model for Horizon City, Texas’ proposed policy, and a strong public health justification from El Paso’s long term success, were not enough to convince that city’s elected officials that indoor smoking was a problem or that this was a policy that was past due. A similar situation occurred in Clint, Texas. Therefore, many lingering questions prevailed, which the literature failed to answer, such as: theoretically, why did El Paso really succeed when so many other cities are still failing ten years later? Is there a theory that can possibly predict successful policy making? Participation in the unsuccessful policy attempts provided an invaluable real-world learning opportunity to engage in the policy process from beginning to end and utilize those lessons learned as inspiration for continued professional study.

Although the published accounts of the Smoke Free Paso del Norte Coalition’s efforts provide a resource for model community coalition building strategy, replicating policy processes is multidimensional and challenging. It is hoped that the current review and analysis contributes to these efforts in the future.
CHAPTER 1 INTRODUCTION

1.1 Environmental Tobacco Smoke

“given that passive smoking is characterized as involuntary smoking, it is nothing short of assault in non-smokers, and a fatal one at that, in light of the well-documented health hazards posed to non-smokers by high levels of nicotine and cotinine in their bloodstream”


Smoking is now an indisputable, attributing factor of many chronic diseases, such as many types of cancer, cardiovascular disease, and chronic obstructive pulmonary diseases, (Centers for Disease Control and Prevention, [CDC] 2010.) Smoking not only poses significant health risks to the individual engaged in the addictive behavior, it also adversely affects the health of “passive smokers”, (i.e. those who involuntarily inhale the wastes and toxins excreted through the side stream smoke created by the combustion of the burning cigarette), and also through exposure to main stream smoke, (the smoke which is exhaled after circulating through the smoker’s respiratory system (American Cancer Society, [ACS] 2009.))

Moreover, the US Environmental Protection Agency (EPA), the US National Toxicology Program, and the International Agency for Research of Cancer (IARC), a branch of the World Health Organization, have all identified and classified secondhand or environmental tobacco smoke (ETS) as a known human carcinogen as sixty of the over four-thousand chemicals found in ETS are known or suspected of causing cancer (ACS, 2009). The Executive Summary of the 2006 Report of the Surgeon General states “there is no risk-free level of exposure to secondhand smoke; eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke”, p.9.

1.2 Tobacco Regulation

Tobacco is an integral part of early and modern American history. As long as there has been a demand for the product, its taxation and opposition to its consumption have all been recognized as issues
in need of governmental intervention as demonstrated through the various types of anti-tobacco and excise tax laws. Public health literature indicates that when the general public’s health is the main concern, as opposed to an individual’s health, then the government is the entity obligated to protect it, due to its “inherent and moral authority to do so” (Oriola, 2009.)

The history of tobacco regulation in the United States is long and complicated. The last sixty years alone have provided ample time for scientific research to provide evidence to support the need for prevention and control of this highly addictive product. The 1952 Hammond-Horn Study, launched by the American Cancer Society, solidified that cigarette smoking was “a cause of death from lung cancer and coronary heart disease” (ACS, 2012). In 1965, the federal government addressed growing public sentiment regarding smoking with the passage of the Federal Cigarette Labeling and Advertising Act (FCLAA) which first required the Surgeon General’s warning to be placed cigarette packages. By 1971, the federal government had banned broadcast advertising of cigarettes. In 1986, the passage of the Comprehensive Smokeless Tobacco Education Act (CSTEA) mandated warning labels for smokeless (chewing) tobacco products and included those products that were also banned from broadcast advertising (Herington, 2010). Most recently, the 2009 Family Smoking Prevention and Tobacco Control Act granted the Food and Drug Administration certain authority to regulate tobacco. It also required graphic color warning labels similar to those utilized in other countries to be prominently placed on tobacco packaging beginning in 2011.

Federal intervention has not been limited to preventative measures. In 1996, the Food and Drug Administration attempted to use its authoritative powers to cross into to regulating the distribution of tobacco products. By utilizing the premise that nicotine was a drug that could be delivered into the body via smokeless and regular tobacco products, the Food, Drug and Cosmetic Act was intended to restrict distribution and sale of tobacco products to adolescents. In response, the tobacco lobby exerted its
massive force and challenged the act. The case went before the Supreme Court in 2000 when the ruling was made that the FDA did not have jurisdiction over tobacco (Herington, 2010).

U.S. Surgeon General David Satcher’s 2000 Report, “Reducing Tobacco Use”, (p.30) recounts the details of the Master Settlement Agreement of 1998 that were reached in response to litigation between the tobacco industry and 46 US states, the District of Columbia and five commonwealths and territories. These entities filed suit against the tobacco industry in an effort to recoup Medicaid costs for the care of persons injured by tobacco use. Within the settlement, the tobacco companies agreed to pay states $246 billion over 25 years. The settlement also established provisions for the benefit of public health including prohibition of youth access, bans on marketing, strict rules on lobbying, restrictions on outdoor advertising, and an additional $25 million contribution annually for ten years to be used towards a charitable foundation to study programs to reduce teen smoking and to prevent diseases associated with tobacco use (Surgeon General’s Report, 2000). Texas, Mississippi, Minnesota, and Florida were not part of the Master Settlement Agreement as they had previously settled with the tobacco industry for $40 billion (Wilson, 1999).

In the absence of strong state and national legislation protecting indoor spaces from environmental tobacco smoke, may municipalities have taken it upon themselves to pass or introduce strengthened local policies to protect workers and vulnerable populations from indoor environmental tobacco smoke. For example, the American Nonsmokers’ Rights Foundation indicates that the first two municipalities to adopt comprehensive smoke free ordinances were Shasta County, California on May 5, 1993, and Davis, California on June 24, 1993 (ANSR, 2010). El Paso, Texas policy makers acknowledged this issue and began efforts to control it five years before the release of the 2006 Surgeon General’s report that stated 100% smoke free environments were the only way to ensure protection from all dangerous levels of second hand smoke.
This paper focused on the political processes surrounding the creation, passage and enforcement of El Paso’s comprehensive municipal level indoor smoking restriction over ten years ago. The political factors leading to its passage were of particular interest in this study as the existing case studies mainly focus on the coalition building and community engagement efforts that influenced the local policy action. As described below, such factors were lulled primarily from existing public record documents and newspaper artifacts.

1.3 Smoke Free Workplaces

The Smoke Free Texas Coalition, formed in 2004, is an active, state level advocacy group. It is comprised by many groups including the American Cancer Society, the American Cancer Society Cancer Action Network, the American Heart Association, the American Lung Association, Americans for Nonsmoker’s Rights, Campaign for Tobacco Free Kids, the Lance Armstrong Foundation, the March of Dimes, the Texas Medical Association and the Texas PTA. Championing the need to make Texas a smoke free state, they are unified and collectively agree that smoke free environments are essential to safe workplaces.

According to the Smoke Free Texas Coalition, there is no risk-free level of exposure to secondhand smoke and food service workers are 50% more likely to die from lung cancer than the general public. They also note that secondhand smoke levels in bars are 3.9 to 6.1 times higher than in office worksites. Furthermore, they argue that smoke-free polices are the most economic and effective protection from second-hand smoke exposure [as] separate areas, air cleaning or ventilation does not eliminate exposure (Smoke Free Texas fact sheet, 2009). Moreover, the peer reviewed literature supports the coalition’s arguments by indicating that policies restricting smoking in public places and worksites are effective in terms of reducing population exposure to secondhand smoke, decreasing cigarette consumption, and increasing cessation and quit attempts among smokers (Osypuk, Acevedo-Garcia, 2010). In 2001, the primary argument of the local Smoke Free Paso del Norte Coalition was
always that the El Paso ordinance action was an issue of workplace health and safety. The primary objective of the Smoke-Free Paso del Norte Coalition was to win approval for an ordinance to protect nonsmoking employees and patrons from the health effects of secondhand smoke in all workplaces and public places, including restaurants, bars bingo facilities, and bowling alleys (Reynolds, Hobart, Ayala, Eischen, 2005). As will be described, this unified stance has been credited by advocates as one reason why the ordinance passed in 2001.

1.4 Understanding El Paso’s Comprehensive Ordinance

The El Paso Clean Indoor Air Ordinance §014878, is an amended version of a smoking restriction that was already in place in El Paso. The earlier version permitted restricted smoking in some public places, but allowed smoking in taxis, tobacco stores, bowling alleys, bingo halls, private homes, and private homes utilized as daycare centers (Church, 2001). Ordinance §014878, contained in the appendix, provided stronger protection from environmental tobacco smoke. In Chapter 2, section 2.1 it identifies comprehensive ordinances as “those that cover worksites, including smoke free restaurants and bars, and do not allow for separate rooms, ventilation allowances, opt-out clauses and other weakening provisions”. A private residence is not a “place of employment” unless used as a child care, adult day care or health care facility”. The ordinance strictly defines smoking as “inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or combustible substance in any manner or in any form” (El Paso, Texas, Ordinance §014878, 2001). These terms are important as they solidify the workplace stance the El Paso Coalition stressed in its advocacy efforts.

1.5 Barriers to 100% Smoke Free Policy in El Paso, Texas

Multiple newspaper accounts, reviewed later, suggest that the comprehensive nature of this ordinance was a heated source of debate between smoke free supporters and detractors. According to the
American Non-smokers’ Rights Foundation, El Paso was the thirty-fifth city in the nation, and the first in Texas, to adopt a 100% smoke free law in all workplaces, restaurants and bars. Various California, Massachusetts, Oregon and Colorado cities ranked in the top 34 spots, in varying order (ANSRF, 2010).

The passage of El Paso’s smoke free ordinance was unlikely as studies of the relationship between local community characteristics and adoption of local tobacco control ordinances have found that communities with higher socioeconomic status (Nykiforuk et al., 2000, Skeer et al., 2004) and large populations (Bartosch & Pope, 2002, Nykiforuk et al., 2007) tend to adopt strong tobacco control policies (Eisenberg, McCotter, Sciaccia, 2010). According to 2000 US Census data sets, El Paso’s total population (for the city) was reported as 563,662 for that period, relatively small compared with the population of two other notable Texas cites, Dallas and Houston, which reported populations of 1,188,580 and 1,953,631 respectively. Despite the size difference, The American’s for Nonsmokers Rights indicates that Houston’s comprehensive smoke free ordinance took effect on September 1, 2007 and Dallas’ comprehensive smoke free ordinance took effect on April 10, 2009, both much later than El Paso’s, which took effect years earlier. Moreover, El Paso’s experience may have helped those cities to move quicker than they might have.

Higher socioeconomic status was also cited as a positive indicator for comprehensive tobacco control policy adoption. Here El Paso also fell short of other major cities. For example, the 2000 census revealed that El Paso city reported median 1999 household income of $32,124 compared to the Texas median 1999 household income of $39,927. Additionally, 22.2% of the population in El Paso city was reported as living below the poverty level that year as compared to 15.4% in Texas overall. Thus, El Paso had at least two known barriers working against the proposed passage of a comprehensive smoke free ordinance.

El Paso’s ordinance has remained unchanged since its adoption in 2001. As of April, 2012, the state of Texas has yet to enact a 100% smoke free state policy, despite considerable municipal level
protective action statewide. As of April 1, 2012, thirty-three Texas municipalities have adopted policies that protect 100% of non-hospitality workplaces, restaurants and freestanding bars (ANSRF, 2012.)

1.6 Assessing municipal level tobacco policy processes

Researchers have identified John W. Kingdon’s Multiple Streams Framework as a useful method of policy analysis in the study of tobacco policy processes. Specifically, Kingdon’s framework was utilized in the analysis of the development and political decision making processes of Lexington, Kentucky’s smoke-free law which passed in 2003 (Greathouse, et. al, 2005). They described the context in which Kingdon’s independent streams, problems, policies and politics, were utilized to determine indicators (political factors) of Lexington’s policy change process.

In the Multiple Streams approach, problems are the focal issues presented to policy makers, policies are ideas generated by experts, academicians, bureaucrats and policymakers, and politics are the issues that either support or deter the success of the issue, often described as “the political mood” (Greenhouse, et al, 2005). Kingdon theorizes that ultimately, when these independent streams “couple” favorably, or come together proactively at a given time, the policy’s “window of opportunity” opens and the issue will be placed on the political agenda (Kingdon, 1995, Greenhouse, et al, 2005).

The 2005 Lexington, Kentucky case study determined that their window of opportunity to pass their smoke free ordinance opened in 2003 due to (1.) changing public behaviors and attitudes towards smoking and government’s involvement in protecting public health, [which indicates there was an understanding of the indoor smoking problem] (2.) organized advocacy, (3.) the increasing number of states and municipalities adopting smoke free laws,[which illustrates acknowledgement of smoke free policies as the best policy solution] and (4.) organized and persistent grassroots pressure [the politics of city government did not work against the best solution for the problem].
This process can be complex. The method by which to determine the best solution, from many possible solutions, can explain why certain issues do not make it to the political agenda. If the solution does not appear to be the right solution at the right time, the policy will not move forward (Gulbrandsson & Fossum, 2009). Moreover, Kingdon provides a framework for examining the situation prior to the passage of the El Paso Ordinance.
CHAPTER 2 STUDY AIMS AND OBJECTIVES

2.1 Study Aims

The aim of this investigation is to describe, through use of archived records, which factors promoted and could have inhibited the successful adoption of El Paso’s comprehensive smoke free ordinance in an unlikely political climate and to place such factors within Kingdon’s Multiple Streams Framework of political processes. As the ordinance itself has been utilized as a model for other communities, it is anticipated that findings of this study may provide public health advocates with a rich scope, context and understanding of the phenomenon surrounding this municipal level public policy. Such context is important as it is not just the wording of the policy alone that is significant. The early and swift passage of the historic prevention policy in this unlikely community may encourage other communities to do the same. It is further anticipated that this effort will afford prevention advocates who are looking to tobacco prevention policies a reference from which to anticipate the logic and external forces policy makers and advocates consider when debating public health policies at a municipal level.

2.2 Specific Study Objectives

Through an analysis of existing data which included newspaper articles and City Council meeting minutes, the objectives of this study were to (a) Describe the specific factors that influenced the El Paso Clean Indoor Air Ordinance passage and (b) Place the factors within a recognized theoretical framework in order to generate a systematic understanding of the municipal level policy process.

The El Paso case study, published in the January, 2005 issue of Preventing Chronic Disease, Public Policy Health Research, Practice, and Policy (CDC), provided a detailed description of the chronological events explaining how the ordinance unfolded and how The Smoke Free Paso del Norte Coalition aided successful passage of the ordinance. However, neither it, nor the Hobart 2003 CDC case study, provide (a) detailed description of the political factors or social climate at the regional, state or
local level (i.e. Kingdon’s politics stream), (b) detailed accounts of the June 26, 2001 El Paso City Council Meeting to explain how the council members determined the indoor smoking problem was an issue that they could then resolve (i.e. Kingdon’s problem stream), or (c) why they ultimately voted in favor of the ordinance (the policy, or best solution). The present study sought to fill this gap in the literature with specific focus on the “politics” stream.
CHAPTER 3 METHODOLOGY

3.1 Retrospective Case Study

A retrospective single-case study approach was utilized in this investigation. It was identified as the best methodology as it satisfies three criteria for utilizing a single-case study approach as (a) a specific “how” question is being asked (b) about a recent past event which (c) the investigator had no control (Yin, 1989). The method was qualitative and descriptive and focused on the political context of the event. It was based on review of archival records, primarily newspaper articles and meeting minutes. Finally, Kingdon’s Multiple Streams Framework guided the classification of the factors associated with the El Paso Clean Indoor Air Ordinance.

3.2 Data Collection

A review of existing documents, consisting of newspaper articles and other documents chronicling the ordinance from 2000-2002, including El Paso City Council meeting minutes and associated public archives was conducted to identify content describing inhibiting and facilitating political factors. Documents containing evidence of themes consistent within Kingdon’s framework in addition to key events were extracted from the collection and utilized as the main sources of supporting data.

Newspaper articles were obtained through full support and cooperation from the El Paso Office of the American Cancer Society (ACS) where they have been archived since 2001. The El Paso ACS office was the organizing agency for the A Smoke Free Paso del Norte Coalition in 2001 when the ordinance passed. Additional articles were obtained through on-line searches of databases and links through advocacy and media websites. The meeting minutes providing transcription of the June 26, 2001 El Paso City Council Meeting were obtained from a database within the City of El Paso website in 2010.
3.3 Data Analysis and Interpretation

After a thorough review of the documents, articles and documents containing direct quotes and statements from policymakers, and informative versus opinion driven editorials were examined. Emphasis was placed on informative articles as the journalists were expected to report facts, to the best of their knowledge, without bias. Direct quotes from policy makers and stakeholders were of particular interest as they offered insight into how the individual experienced the phenomenon as it was happening. After comparing information collected through this process, evidence supporting predefined political factors was identified and categorized and arranged in tabular form (Table 4.1).

This research can be considered a quasi-content analysis as it follows many, but not all of the steps of the process of a traditional content analysis as outlined in the 2002 edition of *The Content Analysis Guidebook* by Kimberly A. Neuendorf. The first step in the process was accomplished by identifying a theory and a rational justifying what content was analyzed and why. Kingdon’s Multiple Streams Framework (MSF) is a well established policy agenda theory that explains how issues become problems in need of a best policy option in order to be addressed and resolved. The rational for utilizing media reports chronicling the actions leading to and following the indoor smoking ban action was to identify the political factors and related events that aligned with the constructs of the MSF. Unlike experimental research, this study began with a recognized theory first, then went through a deductive process to determined if the theory or other variables could explain a documented phenomenon.

The conceptualization for the study, the second step in the process, was determined by the researcher. The variables, or political factors, were determined through a literature review process of municipal level tobacco policy research in addition to public policy research.

The third step, operationalization, was accomplished by matching the variables identified with the predetermined policy factors. Internal validity was established as the evidence of the factors was identified as corresponding to a policy factor as they were each described in the literature.
This research is considered a quasi-content analysis, as the fourth step, rigorous human or computerized coding of the messages, was not conducted. In a traditional content analysis, a code book or dictionary would have been predetermined to identify recurring themes within the content utilized; content can include text, visual images, or sounds. The code book and systematic coding method allows for inter-rater reliability between all researchers when reviewing findings. Complex coding was not utilized in this case study as the results can be considered preliminary.

Sampling of the content did occur. After reading the 191 newspaper articles and associated documents, 22 of the sources were selected as the best sources of information (Chapter 4, Results). In contrast to experimental research, a predetermined, random sample of sources of evidence is not necessary in a content analysis. Samples in this study were purposefully selected due to their content.

3.4 Procedure

Of the potential 191 newspaper sources and associated documents, the 22 most informative sources were categorized into the following groups: (n=17) informative print newspaper articles and credible internet-based publications, (n=2) City of El Paso archive documents, (n=2) supporting literature (n=1) tobacco industry published report. These sources were identified after eliminating articles and materials that repeated information. In addition, deliberate opinion driven pieces that did not contain any type of verifiable information that could be cited as evidence of a policy factor were eliminated. After repeating the systematic review of each source, the 169 sources that did not contain sufficient evidence of any predefined policy factors were disqualified. The following policy factors, (as defined by Wakefield, 2001) guided the systematic review: 1.) media, 2.) crisis, 3.) constituents, 4.) personal experience, 5.) fiscal pressures, 6.) market forces, 7.) special interest, 8.) research findings, 9.) political ideology, and 10.) litigation.
CHAPTER 4 RESULTS

In this case study, evidence to support seven of the ten initial guiding political factors were identified: (1.) a special interest group in the form of an active and organized coalition, (2.) a general liberal political ideology, (3.) increasing public, or constituent support of smoke free policies, (4.) media, (5.) personal experience of “key players”, (6.) knowledge of research findings, and, (7.) fiscal implications. There was no evidence indentified that concluded a crisis, market forces, or previous litigation served as facilitating or inhibiting political factors in this case. Table 4.1 documents the seven factors identified and a summary describing how the evidence obtained accounted for each.

Table 4.1 Summary of factors and related events that influenced the passage of the El Paso Clean Indoor Air Ordinance on June 26, 2001.

<table>
<thead>
<tr>
<th>Enabling Factor</th>
<th>Events</th>
<th>Evidence</th>
</tr>
</thead>
</table>
| Active and Organized Coalition         | Facilitating                                                          | • Paso del Norte Health Foundation’s A Smoke Free Paso del Norte $3.4 million dollar initiative filled a critical gap in local tobacco prevention education funding; funds facilitated the development of a trained advocacy coalition  
• The El Paso City County Health and Environmental District / Board reintroduced smoking indoors as a workplace health problem; all coalition members interviewed in the press provided a unified, consistent stance that it was an issue of workplace safety and health.  
• A Smoke Free Paso del Norte funding provided for cessation services (Quitline®, Quit Kits, etc.) that were in place leading to the vote and after to assist smokers with quitting |
| Liberal Political Ideology of the City | Facilitating                                                          | • Literature states Democrats generally tend to support smoke free policies; El Paso’s history of generally voting in favor of liberal policies may have indirectly supported the indoor smoking ban  
• Clean Indoor Air ordinance was placed on the June 26, 2001 agenda after the May, 2001 Mayoral and city election; previous Mayor was quoted in one article as being hesitant of supporting a 100% smoking ban |
| Public Support for Smoke Free Policies | Facilitating                                                          | • The El Paso Times articles reviewed covering the story in the immediate weeks leading to the vote indicated that some elected officials, new and incumbent, were skeptical of supporting a 100% smoke free indoor ordinance due to their concern for revenue and loss of tax base  
• 1995 poll indicated 67% of registered El Paso voters polled were in favor of a smoking ban, 30% opposed it, 3% undetermined by source  
• 2001 KVIA-ABC 7 – El Paso Times poll indicated 69% of those polled in El Paso were in favor of a public smoking ban, 27% opposed it, and 4% were unsure.  
• Stronger indoor smoking restrictions were being implemented in “progressive” states and municipalities across the nation |

<table>
<thead>
<tr>
<th>Inhibiting</th>
<th>A proposed stronger smoking ordinance amendment failed in 1995; lack of community mobilization was cited as one possible cause for failure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantial Media Attention Facilitating</td>
<td>Print media presented detailed articles regarding indoor smoking as a problem and explanation of how the proposed strict smoking ban was being considered as the best solution to the problem</td>
</tr>
<tr>
<td></td>
<td>Media Campaign (A Smoke Free Paso del Norte Coalition)</td>
</tr>
<tr>
<td>Inhibiting</td>
<td>The El Paso Times printed many opinion and editorial columns not only in support of the policy, but also expressing the idea that even though most people didn’t smoke, they were concerned that a strict ordinance would impede the personal liberties of smokers</td>
</tr>
<tr>
<td>Personal Experiences of Key Players Facilitating</td>
<td>Transcription of the June 26, 2001 City Council Meeting Minutes document one council woman’s personal experience with smoking and recognition of the indoor smoking problem and its potential effects on her grandchildren as an influence on her vote in favor of the policy</td>
</tr>
<tr>
<td>Inhibiting</td>
<td>Sole opposing council men, a business owner, did not perceive the issue as a workplace health problem; he proposed separate spaces and ventilation systems similar to Las Vegas, NV as the best option</td>
</tr>
<tr>
<td>Knowledge of Research Facilitating</td>
<td>“Policy Champion” Larry Medina was an experienced incumbent, in 2001 he campaigned (and was selected as) the influential Mayor Pro Temp designation. Medina was quoted as having been a former opponent of the issue who had changed his opinion because he educated himself with research findings regarding the effects of second hand smoke and comprehensive smoke free policies</td>
</tr>
<tr>
<td>Inhibiting</td>
<td>Evidence to support no long term negative impact on business was limited</td>
</tr>
<tr>
<td>Fiscal Implications Facilitating</td>
<td>Restaurant and bar special interest was divided, not all opposed the ban</td>
</tr>
<tr>
<td></td>
<td>By removing the 25 foot stipulation, 7 of the 8 city council members agreed that this would allow businesses to build patios adjoined to the establishment that could still accommodate smoking patrons</td>
</tr>
<tr>
<td></td>
<td>7 of 8 Council members agreed that allowing six months to prepare for adoption would allow business owners to educate themselves and their staff about the policy’s mandates no less than four week prior, and it allowed smokers to begin taking steps to quit and reduce smoking</td>
</tr>
<tr>
<td>Inhibiting</td>
<td>The policy was not approved as initially proposed; the 25 foot stipulation was removed</td>
</tr>
<tr>
<td></td>
<td>City Attorney argued that removing the 25 foot rule would make the language vague and difficult to implement</td>
</tr>
<tr>
<td></td>
<td>The ordinance does not protect city parks, outdoor spaces or specific mention of “hookah bars” as there were none in operation in El Paso in 2001</td>
</tr>
</tbody>
</table>

4.1 Political Factors

Table 4.1 lists the seven political factors identified as crucial in this case study and documents the evidence supporting their inclusion. In addition, the following discussion will demonstrate how the factors identified in this case study are supported in the public health, political science, law and social science literature as determinants in the public policy process. Although the factors identified in this
report are specific to the policy events and actions surrounding passage of the 2001 smoke free El Paso ordinance, they may generalize to other situations. It is further anticipated that the table of factors will serve as a guide from whom communities can develop needs assessment questions, policy maker surveys, and community questionnaires to be integrated into strategic plans and grassroots advocacy campaigns for municipal level health policies.

In this section, the seven political factors detailed in Table 4.1 will be individually described, the evidence supporting their inclusion will be reviewed, their importance in this case explained, and how they impact policy explored. The importance of the key findings and anticipated potential impact of the research on future policy will be discussed.

I. An Active and Organized Coalition

An important factor in the passage of El Paso’s smoke free ordinance was an active and organized community coalition. The initial “Clean Indoor Air Task Force”, formed in November 2000 and later referred to as the “A Smoke Free Paso del Norte Coalition” in the published accounts, identifies the entities that comprised the El Paso coalition. According to Reynolds et al. (2005), “key community leaders, voluntary health agencies, state and local health departments, local law enforcement, local hospitals and community clinics, Planned Parenthood, an Independent School District, the Region 19 Education Service Center, 18 churches, faculty from the University Health Sciences Center, a waiter/bartender and supportive (behind the scenes) local restaurant” all comprised the initial task force. The American Legacy Foundation and Community Voices, a Tobacco Control Program funded by the W.K. Kellogg Foundation were also identified as key supporters.

Reynolds et al. stated that “A Smoke Free Paso del Norte Coalition was founded with the mission to win approval for an ordinance to protect nonsmoking persons from the health effects of secondhand smoke in public places” (p. 1). The first actions the coalition engaged in included community education presentations, recruitment of key supporters and the formation of a supporting
youth coalition. In addition to being well organized, the coalition developed the technical capacity of its members. The 2005 case study further notes the coalition studied model policies and sent members to attend the 2000 CDC Summer Institute course on clean indoor air.

The Smoke Free Paso del Norte Coalition was only specifically mentioned by proper name in one of the 21 key sources utilized in this case study, an *El Paso Times* article written by Gilot and Borunda in 2002. However the newspaper articles and city council meeting minutes reviewed repeatedly evidenced the positive impact that key coalition organizations and individual members played in the passing of the ordinance. For example, a paid ad in the June 23, 2001 *El Paso Times*, with the call to action encouraging readers to contact city council members in support of the ordinance, features the logos of three prominent national voluntary health organizations: the American Cancer Society, the American Heart Association (AHA) and the American Lung Association (ALA). A logo for the Texas Parent Teacher Association was also featured in the advertisement. ¹

Because those organizations previously described were not specifically named in the preceding case study (Reynolds et al., 2005) the authors did however make a reference to voluntary health organizations and the local health department as having participated in the coalition. The American Cancer Society was a voluntary health organization in operation in El Paso in 2001. The El Paso City-County Health and Environmental District was the local health department in El Paso in 2001. Representatives from those two entities were repeatedly identified in the press speaking in coordinated support of workplace smoking restrictions.

A June 13, 2001 *El Paso Times* article stated the ordinance was being “aggressively pushed by the El Paso City–County Health and Environmental District and the local American Cancer Society” (Crowder, 2001). Kathrin Berg Pettit, a former representative of the ACS was quoted in 9 of the 21 pivotal articles and once in the June 26, 2001 City Council Meeting Minutes. Dr. Jorge C. Magaña, the

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¹ One logo was unrecognizable due to the condition of the copy of the artifact itself; therefore it cannot be determined if it was a logo the coalition may have utilized to represent itself or if it was a logo pertaining to another organization.
former Director of the El Paso City-County Health and Environmental District or Gilbert Gutierrez, a Public Health Administrator speaking on behalf of the El Paso City-County Health and Environmental District were quoted in 7 of the 21 key articles. Mr. Gutierrez was also quoted as having addressed the City Council in the June 26, 2001 City Council Meeting Minutes.

Although the coalition itself was not the center of the attention in the media during the policy process, its existence was a recognized presence within the community and to the opposition. One journalist’s coverage of the indoor smoking ban referred to an unnamed unified force in an article written one month after the policy’s implementation. He stated “the health lobby that helped push the ban through City Hall remains as organized as ever, and their anecdotes are opposite those heard from the bars” (Simon, 2002).

The findings for the evidence supporting the El Paso coalition as a policy factor are consistent with literature that also suggests the utility of a strong and organized coalition. Indeed, the literature has identified several elements associated with organized community coalitions and grassroots advocacy that serve to facilitate municipal level policy outcomes (Greathouse, Hahn, Chizimo, Okoli, Warnick and Riker, 2005; Theodoulou, Cahn, 1995). The previously published El Paso case study of this topic reaches the same conclusion (Reynolds, Hobart, Ayala, Eishen, 2005).

According to the literature, certain resources help maximize the potential impact of special interest groups (i.e. coalitions). First, these groups should possess bureaucratic knowledge. This means a clear understanding of how the political system functions. Second, special interest groups should have a network of contacts that can facilitate the exchange of information. Third, special interest groups should have citizen backing, or political will. Political will is defined as “society’s desire and commitment to develop and fund new programs [or policies] or to support or modify existing programs” (Atwood, Colditz, and Kawachi, 1997). Finally, special interest groups should possess the ability to make political
contributions and generate interest through a public relations campaign (media). An organized media campaign can inform and influence attitudes in favor of the group’s agenda (Theodoulou, Cahn, 1995).

While it is understood that most groups will not likely have all of those resources at their disposal, the newspaper sources documented that the members of the Smoke Free Paso del Norte Coalition had many of these resources in place. For example, the June 13, 2001 El Paso Times article mentioned stated the ordinance was being “aggressively pushed” (Crowder, 2001), suggests that the Smoke Free Paso del Norte Coalition members were representatives of organizations familiar with bureaucratic systems, including the city-county health department and non-profit organizations.

Transcripts from the June 26, 2001 El Paso City Council meeting documented public support for the coalition’s efforts. Specifically, the document indicated that the Council chambers were filled to capacity with multiple private citizens speaking in support of the ordinance. This evidence suggests citizen backing of the coalition’s activities and agenda.

The key newspaper articles also indicated that the Smoke Free Paso del Norte Coalition had cultivated a network of contacts, another resource identified as crucial to successful coalitions. For example, an article published in the March 31, 2001 edition of the El Paso Times quoted Lawrence Benegas, a public health promotion specialist with the New Mexico Department of Health, as a source regarding El Paso’s failed indoor smoking policy attempt in 1995 (Villalva, 2001). Reynolds et al. (2005) acknowledged the Tobacco Free Las Cruces Coalition as having providing “invaluable assistance” to the El Paso Coalition.

Finally, the previously mentioned print newspaper ad the coalition had published in the June 23, 2001 El Paso Times indicated evidence of the final recommended resource the coalition had at its disposal, an organized media campaign. Specifically, this ad demonstrates that there was some organized media effort that took place before the city council voted on the ordinance.
The only recommended resource the El Paso coalition did not have was the ability to make financial political contributions which is consistent with the literature suggesting that not all special interest groups will have all of the recommended resources or abilities available to them. Overall, however the combination of resources and considerations described provide strong evidence demonstrating how an active and organized coalition was a facilitating factor in the El Paso smoke free policy action in 2001.

The evidence reviewed also suggests that the coalition was challenged by three potentially inhibiting factors, all which began before its formation. Nixon and Glantz, (2002) describe three challenges the coalition faced early on. The first challenge was the 1975 Clean Indoor Air Act which set in place 26 years of weak provisions which, for the most part, remained unchallenged at the state and municipal levels. Although El Paso’s first attempt to strengthen its existing minimal local ordinance failed in 1995, the news archives indicated the coalition was clear about advocating for a 100% comprehensive ordinance that included bars in its 2001 effort, thus challenging the state mandate.

The second challenge the coalition encountered, outlined in Nixon and Glantz’s article, was the limitation of state funds reaching El Paso after East Texas had been deemed the state’s priority in 1999. It further states that the 9 million dollar allotment that year was to be used by the Texas Department of Health to develop a tobacco control program for the prioritized portion of the state. An article published in the February 7, 2002 El Paso Times stated that [at the time of publication] “Texas rank[ed] 39th in the nation in using tobacco settlement money to protect children from tobacco’s dangers” (Garber, 2002).

The third challenge the coalition faced was that the state tobacco settlement money that was distributed to El Paso in 1999 was granted to research institutions rather than to organizations engaged in cessation and prevention efforts. Additionally, according to Garber’s February 7, 2002 article in the El Paso Times, in 2001 El Paso received $1.7 million of the nearly $340 million in settlement money awarded to Texas that year. However, that money was allotted to R.E. Thomason General Hospital to
cover a portion of the $49.7 million debt the hospital had incurred providing indigent care. The investment of $3.4 million dollars from the Paso del Norte Health Foundation into the Smoke Free Paso del Norte Initiative provided resources not only for advocacy training and leadership for the Smoke Free Paso del Norte Coalition, but also for the provision of cessation services necessary for behavior change.

In summary, the evidence supporting an active coalition as a facilitating political factor in this case study is strong, despite the fact that the coalition was not referred to by name in the publications. As the preceding discussion described, the coalition’s impact was a positive force leading to the decision and action of this municipal policy and remained intact into the implementation and enforcement phases.

II. A Liberal Political Ideology

Within the archives examined, there was strong evidence to suggest a liberal political ideology was also a factor that facilitated the passage of the El Paso Clean Indoor Air ordinance in 2001. Political ideology has been defined as “an action-oriented model for people and society. Political ideologies are described as bodies of ideas that contain prescriptions for public policy” (Permaloff and Grafton, 2003). Utilizing that definition of political ideologies, the liberal ideology, as it pertains to smoke free policies in general, has been identified as a policy factor in this case through supporting literature and through documentation of a key event captured in one specific newspaper article.

In their publication entitled Bridging the Ideological Divide: an Analysis of Views on Tobacco Policy, Whelan, Ross, Douglas, and Lukachko, (2000) delineated the basis for smoking restrictions associated with political ideologies of the Democrat and Republican parties. According to this publication, liberals (Democrats) in general tend to support the restriction and elimination of indoor smoking in private and public places, especially if it means nonsmokers are vulnerable to exposure. It further states that conservatives (Republicans) in general tend to argue that a lack of scientific evidence regarding health effects and environmental tobacco smoke (ETS) make smoking regulations violations
of smoker’s freedoms. Permaloff and Grafton (2003) assert that political ideology is central to politics and policy formation, therefore this factor must be considered relevant to this case. This description of political ideologies regarding smoke free policies was utilized as a generalization for the purpose of this study.

Support for the idea than El Paso has a liberal political ideology can be found in an article dated June 17, 2001 originally published in the *Los Angeles Times*. The article described how the former two-term Mayor, Carlos Ramirez, was “kicked out” of the El Paso Democrat party for supporting the presidential campaign of Republican, Former Texas Governor, George W. Bush in 2001. In that article, the author stated “El Paso’s Democrat, working class, Latino ethos runs deep and strong” (Stack, 2001). A public perception, which was evident as far away as California, had already been identified that publically classified El Paso as a liberal city in general. Therefore, it is likely that, if in fact El Paso does abide by a democratic ideology, as suggested in Stack’s *Los Angeles Times* article, it suggested that policy makers were able to support the ordinance with little or no fear of retaliation from constituents due to inherent political ideological support.

The language of El Paso Ordinance § 014878 (Appendix I) itself also provides strong evidence of the “prescription”, or political ideology, that was utilized in its development. The six introductory “Whereas” clauses of the ordinance state that indoor ETS is an environmental toxin, no safe level of exposure exists, and that [that by adopting the ordinance], the City Council is acknowledging and accepting its responsibility to regulate ETS to “protect the public health and welfare of the citizens of the City of El Paso.” Those arguments are the core of the liberal ideological stance pertaining to smoke free laws as delineated by Whelan, Ross, Douglas, and Lukachko’s (2000) publication.

El Paso’s adoption of its smoke free policy based on political ideology is also supported in the literature. According to Greathouse, Hahn, Okoli, Warnick & Riker, (2005, p. 215), Lexington, Kentucky’s smoke-free law, successfully passed in 2003, was based on arguments similar to El Paso’s.
They stated that the Lexington policy was supported on the premise that second-hand smoke was an occupational health hazard from which there were no safe levels of exposure and that it was the responsibility of the local government to protect public health. Their study further identified those issues as having been “fundamental to the policy formulation process and the evaluation of existing policies and potential alternatives” (Greathouse, Hahn, Okoli, Warnick & Riker, 2005), Although the Lexington, Kentucky case study did not specifically cite a liberal political ideology as a political factor with the specificity this case study aims to accomplish, the similarities between Lexington’s smoke-free indoor air policy development and successful adoption compared to El Paso’s are almost identical based on the previous evidence.

Finally, although the Clean Indoor Air Ordinance was not decided by a public vote, evidence indicates the majority of El Paso’s voters supported the comprehensive ordinance. Specifically, the widespread support clarifies why the assertion has been made that El Paso’s citizenry largely supported the liberal measure. Whether they were aware it was policy based in liberal ideology or not, evidence will be explored in the next section, on public support that is in and of itself, a political factor.

While the policy itself may have had strong backing from its basis in a liberal political ideology, the indoor smoking ban appeared to face strong resistance and some degree of uncertainty from City Council members that were interviewed by the press in the weeks leading to the vote. An underlying concern for individual rights was identified in the news articles as what could have been a potentially negative factor in this case. In an *El Paso Times* article dated April 20, 2001, the former El Paso Mayor, Carlos Ramirez was quoted as saying that he believed the ordinance came very close to disregarding individual rights and wanted to be sure it would not be a “big government” mandate. Ironically, this statement from a self-indentified “democrat” reflects his support of the republican ideology which according Stack’s *Los Angeles Times* (2001) article was the reason he was removed from h.
Former Mayor Ramirez was not the only Council member who publically voiced the republican ideology via concern over the level of restriction required by the comprehensive ordinance. District 1 Representative Jan Sumrall was quoted as saying she didn’t think it was the government’s role to tell business owners how to operate their businesses (Garber, 2001). In addition, the two main opponents for the vacant Mayoral seat, Raymond Caballero and Former Mayor Larry Francis had also been quoted as stating the ordinance went further than they were willing to go (Crowder, 2001).

Although many of the Council members expressed uncertainty over the indoor smoking ban, the June 26, 2001 city council meeting minutes indicate that only one change to the language of the ordinance was made, which will be discussed in a section below. The ordinance passed in a 7 to 1 vote. Therefore, the political ideology behind the ordinances’ language classifies it as a facilitating political factor in this case. Thus, although these were compelling viewpoints, the liberal ideology prevailed in this case.

III. Public Support for Smoke Free Policies

Political will has been defined as “society’s desire and commitment to develop and fund new programs [policies] or to support or modify existing programs” (Atwood, Colditz, Kawachi, 1997, p. 1604). Political will and public support can potentially influence how a decision-maker will view a proposed policy. For example, the general public’s support for or rejection of a proposed policy serves as an indicator and a “catalyst” for the implementation of smoke free laws. The public’s opinion is influential not only in the election process, but also in the establishment of elected officials’ policy agendas (Osypuk, Acevedo-Garcia, 2010).

This case study presents evidence that attitudes and social norms regarding indoor smoking were changing within the Paso del Norte region, thus categorizing increasing public support for smoke free
policies as a facilitating political factor in this case. Evidence from the media artifacts and peer-reviewed literature supports this assertion.

Various articles published before El Paso’s ordinance was adopted document multiple instances in which smoke free policies around the Paso del Norte Region were either being strengthened or being implemented for the first time. For example, an El Paso Times article published on March 31, 2001 reported that Las Cruces had assisted other New Mexico cities, including El Paso’s close neighbor, Mesilla, NM, to enact ordinances similar to Las Cruces’ (Villalva, 2001). Mesilla’s ordinance, adopted on August 14, 2000, amended its 1995 Smoking Pollution Ordinance which made Mesilla’s restaurants smoke free. It was not comprehensive, as it allowed bars to elect to either go 100% smoke free if separately enclosed or provide ventilation (New Mexicans Concerned About Tobacco, 2000). Revisiting and strengthening the ordinance, as compared to the weaker restrictions it had previously outlined, demonstrates that Mesilla, and other New Mexico cities in the Paso del Norte Region, were recognizing that indoor smoking was a problem and were supportive of resolving the issue through policy redevelopment.

The newspaper artifacts provided more direct evidence suggesting El Pasoans favored this measure. For example, an El Paso Times article published on April 27, 2001 described the details of the first attempt to strengthen the city’s indoor smoking policy. It cited results from a February 1995 poll of registered voters in El Paso (n = 301) which revealed 67% of the voters polled were in favor of the ban and 30% opposed it. The article credits UTEP mathematics professor Bill Kaigh as the researcher who conducted the telephone poll (Church, 2001). The results of that survey suggest that even in 1995, the majority of El Pasoans polled in 1995 supported the ban. Despite that support however, public support was not a strong enough political factor on its own to facilitate passage of the ordinance that year.

Church’s 2001 El Paso Times article also included a graphic presentation of a pie chart detailing an opinion poll that was later conducted between April 1-18, 2001, by an organization only identified as
According to the article, of 301 registered voters (margin of error ± 6 points) indicated 69% of those polled were in favor of the public smoking ban, 27% opposed it and 4% were unsure. In the five years since the first poll had been conducted, public support for such a ban had remained unchanged. The results of the 2001 public opinion poll were cited in two of the key articles reviewed in the months leading to the City Council vote (Church, 2001; Crowder 2001).

Church’s April 27, 2001 *El Paso Times* article, entitled “El Pasoans favor smoking ban”, compared the results of the 1995 opinion poll to the results of the 2001 poll. The author stated that the 2001 poll indicated an “overwhelming” percentage of the city’s Hispanic voters, 77% favored the measure compared to 60% of non-Hispanics. Crowder’s June 13, 2001 *El Paso Times* article entitled “Indoor-smoking ban measure introduced” provided a quote given by Dr. Jorge Magaña, the former head of the health district and the county’s chief health officer, in which he utilized the results of the 2001 poll to justify the need for the stringent indoor smoking ban. Dr. Magana was quoted as saying that the majority of the people in [El Paso] did not want to be exposed to secondhand smoke.

In addition to supportive El Paso residents, the El Paso smoking ban occurred at a time when regional attitudes regarding indoor smoking were changing. There is a great deal of research that confirms that public policies “diffuse”, or move spatially across American States (which can also occur at the national and local level). In essence, the Strategic Theory of Policy Diffusion asserts that governments will implement policies that are influenced by what their neighbors are doing, either in support of or to defend from the action (Gray, 1973; Walker, 1969; Baybeck, Berry, Siegel, 2011). Therefore, the strengthening of the existing smoking bans in Las Cruces and Mesilla, New Mexico, in addition to the implementation of *El Reglamento sobre Consumo de Tabaco*, a workplace smoking ban in Ciudad, Juarez, Chihuahua, Mexico one year earlier, within a relatively close time span as outlined above, provide suggestive evidence to conclude that public support for municipal level smoke free
polices “diffused” across the Paso del Norte Region, as the Strategic Theory of Policy Diffusion suggests.

In summary, strong public support for the stricter smoking ordinance documented in the 1995 poll and 2001 El Paso Times / KVIA 7 poll, in addition to the number of indoor smoking policies being revisited and strengthened around the region, provide a strong evidence base to classify increased public support for smoke free policy as a facilitating political factor in this study.

IV. Substantial Media Attention

The media has the power to both reflect public perception of an issue in the present tense and to shape how the issue will be presented in the future. Therefore it serves a reflecting and influencing role in the policy process (Ries, Rachul, Caufield, 2010). Within the peer reviewed literature, there exists evidence to support that media coverage is a policy factor associated with successful smoking policy passage in general (Smith, Wakefield and Edsall, 2006). The data available for this study, 191 newspaper articles spanning 2000, 2001, and 2002 alone, indicated that the Clean Indoor Air Ordinance was a “news worthy” topic in the print media arena in El Paso. Moreover, this number does not account for the television and radio coverage which likely occurred within the same time span.

In general, research identifies tobacco policy as an especially news worthy topic in print media. For example, a study published in 2006 utilized 9,859 tobacco-centered news articles from 100 “leading” US daily newspapers that had been published between 2001 through 2003, was conducted to determine if tobacco was perceived by the media as newsworthy and if in fact the news coverage influenced tobacco policy outcomes. Smith, Wakefield and Edsall (2006) found that tobacco was considered newsworthy for the most part, with stories about taking action to control the indoor smoking problem as having the greater tendency of being reported. Although the researchers acknowledged that media is recognized as an important method in the communication of health problems, they also noted a
systematic examination of how the health messages themselves affect the policy outcomes is greatly unexplored. In addition, most information that is published relies on a small sample of newspapers and limited to one aspect of tobacco policy such as smoking bans (Smith, Wakefield, and Edsall, 2006). For the purpose of this case study, which accounts for similar limitations, the aforementioned literature supports the identification of media coverage as a facilitating political factor in smoke free policy processes in general.

Letters to the editor, many expressing harsh criticism and claims of personal rights violations, in addition to statements from businesses publically opposing the ban, could have been a potentially inhibiting factor. Within the print media sources from the *El Paso Times* alone, there were 2 opposing letters to the editor among those from the year 2000 and none in support of the ordinance. There were 38 opposing and 52 supporting letters to the editor from 2001. From the letters to the editor collected in 2002, there were 5 opposing and 5 supporting the indoor smoking ban after the first full year of implementation. These figures only reflect the number of letters that were readily available for review within the archived media sources utilized in this study; there may have been more published for or against the ordinance within the three year time span indicated above that were not accounted for. However, the evidence suggests that the presence of negative media surrounding the ordinance was not considered relevant at the time of decision and action. Reference to media was not identified within the transcript as having been an item of discussion among the city council members the day the policy passed, therefore it can be concluded that as the Smith, Wakefield and Edsall’s (2006) study found, the media that described the ordinance as a solution El Paso’s indoor smoking problem might have facilitated the political actions and decisions made preceding the vote that favored the swift passage and adoption of the policy.

In summary, the articles reviewed demonstrate the amount of attention the policy received in the years before, during and after its adoption. The section of this discussion describing coalitions and
special interest groups includes “media” as a necessary construct within the policy process. Therefore, the “earned media” or media recognition that was free by way of consistent news coverage was an important means by which to communicate the pro-ordinance message and win the vote approving the “strict” and “controversial” ordinance. The media was an important factor in this case because it served as an open forum where opponents and proponents on the smoking ordinance were able to publically state their opinions, share facts, air concerns and consider compromises suggested by all the stakeholders involved.

V. **Personal Experience of Key Players**

According to the literature, how the policy makers learn about the current condition, how they relate to it, and the way the condition becomes recognized as a problem are crucial to the amount of attention an issue will receive. In an essay dedicated to political agenda setting, Kingdon explains that policy makers will most often become aware of the current conditions through three main routes: (a.) indicators (i.e. magnitude or incidence), (b.) events that create focus (i.e. a disaster, crisis, personal experience, or through a powerful symbol) or (c.) from the feedback of others. Feedback can come from routine monitoring of programs, cost studies, complaint channels, and so forth (Theodoulou, Cahn, 1995).

In the case of the El Paso smoking ban, Representative Jan Sumrall’s personal testimony (City Council Meeting Minutes, June 26, 2001) provided compelling firsthand evidence that her personal experience as a former smoker was the means by which she understood the indoor smoking condition to be a problem which could be resolved through government intervention.

Specifically, Representative Jan Sumrall’s testimony obtained from the city council meeting minutes dated June 26, 2001 demonstrated that her personal experience, having been a former smoker
who delivered two premature children, was an influence on her opinion in support of the ordinance. However, it did not cause her to completely abandon her opinion regarding businesses.

The candid and very personal testimony of the city council woman regarding her experience as a smoker and fear of allowing people to smoke around her grandchildren was, according to policy research, critical to how the discussion took shape on the day the ordinance was decided. In the aforementioned essay, Kingdon describes Sumrall’s personal experience as critical because it was her position within the city council that classified her as an important, visible participant. Visible participants are defined as “the visible cluster of actors, those who receive considerable press and public attention” such as high level politicians, prominent political figures, political parties and those who campaign on their behalf (Kingdon, p 108). In the case of El Paso’s smoking ordinance, Representative Sumrall can accurately be described as a member of the visible cluster; therefore rendering her testimony compelling, which then significantly increased the chances the ordinance would retain its prominence during the meeting. Kingdon’s essay further explains that if those within the visible cluster do not push the issue, it is very likely that the issue will not move further along the policy process.

Representative Sumrall was also not the only policy maker who may have had a personal experience as an impetus to support the comprehensive smoking ban. In an article reprinted in the *Corpus Christi Caller-Times*, on December 12, 2004, El Paso Mayor John Cook, who was a city council member in June 2001, recalled why he changed his position to fully support the ordinance. In the interview, Cook recalled a Mother’s Day visit to a restaurant when a couple with a baby was seated in a smoking section after being told the non-smoking section had a longer wait time. Mayor Cook stated that at that moment, he realized the baby was inhaling the smoke and something had to be done about it (Falgoust, 2004).

In what could have been a potentially inhibiting factor in this policy process was the personal experience of Representative Cobos. A self-described businessman, and member of the visible cluster,
Representative Cobos provided testimony from the business owner’s perspective. According the city council meeting minutes, he referenced what he termed other “progressive” cities that were still relying on ventilation systems to accommodate smoking clientele. The expressions shared by Representative Cobos, in this case his perceptions of how the situation could become worse for businesses, were merely that, perceptions and not based in a concrete negative experience he had had. This could have potentially been an inhibiting factor had Representative Cobos been able to sway the council in opposition of the ordinance by sharing a more compelling testimony compared to the personal experience shared by Representative Sumrall.

Although personal experience is often a factor that cannot be manipulated or coerced, this case provides an example of how the direct impact the policy maker’s personal experience will affect the decisions they make. Whether decision makers are or are not demonstrating a personal connection with the issue, other means to bring the issue to the attention of the visible participants must also be engaged utilizing the research, events and feedback, as Kingdon suggests.

VI. Knowledge of Research

Kingdon observed that academics, researchers, and consultants are the second most important non-governmental players in the policy process, after special interest groups, for two reasons. First, ideas stemming from their published literature are often discussed between staffers, bureaucrats and lobbyists. Second, Kingdon notes that governmental entities often rely on the expert testimony of these players in hearings, advisory panels and in meetings (Kingdon, p 53-54). Therefore, when decision-makers are able to obtain knowledge of current research through those channels, it becomes an important tool in the development and adoption of evidence-based polices.

Despite this, the health policy literature has determined that researchers and decision makers are often disconnected thus causing a negative impact on the process of developing strong evidence-based policy recommendations. In addition, the scientific data that is often available is not presented to policy
makers in a useful, understandable format. For example, an article describing the key results of a long-term care policy study found that surveillance or risk factor data is often not available at the local level, and what is available is presented in lengthy reports. Furthermore, in order for decision makers to consider the research evidence useful, it needs to explain the public burden, explain why the issue is a priority, explain why it is relevant at a local level and detail potential harm as well as benefits, explain how it affects people personally, and address the estimated costs of the intervention [policy] proposed (Brownson, Chriqui, Stamatakis, 2009). Such comprehensive data is not always available to policy makers.

In the present case, the reviewed literature suggests that knowledge of research was a facilitating factor in El Paso’s policy process. The reprinted article in the Corpus Christi Caller-Times, (Falgoust, 2004) cited El Paso’s experience when that municipality was considering implementing a comprehensive smoke free ordinance. The journalist interviewed former Representative Medina, who had served on the El Paso City Council from 1997 to 2003. The article reported that Medina, who had been recognized as the bans’ chief supporter, had initially opposed the policy. However, Medina stated during the interview that after dedicating himself to learning about the issue, he realized he had a “responsibility greater than protecting businesses”, so he encouraged advocates not to compromise the strength of the ban. He had pledged his support of the issue “even if it meant not winning the vote” (Falgoust, 2004). The article further states that the Smoke Free El Paso Collaborative developed a 600 page resource guide to “convince” people about the risks of indoor smoking. The journalist further stated Medina had dedicated “dozens of hours to study the issue on his own” (Falgoust, 2004). These statements suggest that Representative Medina’s decision making process was an example of both Kingdon’s assertion that policy makers will look to the current research for guidance, in addition to

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2 Presumed to be the Smoke Free Paso del Norte Coalition
Brownson, Chriqui, Stamatakis’s assertion that comprehensive research data was also a factor is his vote.

The city council meeting minutes for the June 26, 2001 meeting document that Katherine [Petit] Burg (as previously identified) of the American Cancer Society, testified that Council Members received information through notebooks in March 2001. These notebooks entitled El Paso Public and Workplace Smoking Restriction Ordinance: El Paso City-County Board of Health 2001, contained five sections of reference materials. The first section included a proposed ordinance fact sheet and draft of the policy’s language. The second section included documents and fact sheets from various credible institutions and organizations advocating for smoke free policies in addition to facts concerning smoking. The third section provided documents detailing arguments against comprehensive smoking ordinances in addition to questions and answers regarding smoking in bars and restaurants. The fourth section provided detailed documentation of how the enactment process would take place and letters expressing community input. Detailed information regarding the role of public health boards in tobacco control was also included. The fifth section included current peer reviewed literature regarding health and economics.

Representative Medina’s admission that his knowledge of the research influenced his vote is significant as there is a considerable amount of literature which indicates that evidence-based decision making is plagued with inconsistency and disconnect between researchers and policymakers. Cessa and Ricci’s (2010) research indicates that the current level of interaction between experts and policymakers is unsatisfactory. The researchers further suggest that third party stakeholders, such as informed citizens may be the necessary link to bridge the research and policy sectors. Neither the previous El Paso case study, nor the newspaper articles reviewed discussed which specific methods were utilized to deliver
research to the El Paso policy makers other than the 600 page notebooks\(^3\) and the public hearing referenced in the June 26, 2001 city council meeting minutes.

One instance of a potentially inhibiting factor in regard to knowledge of research was identified in the transcript of the city council meeting minutes (pg 25). William Postell, identified as a restaurant customer, was quoted as stating the information within the ordinance was not proven to be true or reliable and was in his opinion “mostly flawed”. Because it was not specified which section of the ordinance language Mr. Postell was referring to, a review of the policy’s language indicates his reference was most likely in regard to the effects of second hand smoke delineated in the opening “WHEREAS” section of the ordinance (Appendix 1). His request to City Council to investigate every issue within the ordinance went unfulfilled, however this scenario demonstrates the impact that a misrepresentation or disregard of credible research could have had on this policy if the council had chosen to table the ordinance, as it had in 1995, to further investigate that gentleman’s claims.

The knowledge of the scientific research that has been documented from the personal account of a key decision maker in this case is a notable finding because it validates the recommendations provided by the literature regarding the use of scientific evidence as a justification for the implementation of a comprehensive ordinance. Moreover, the literature indicates that because the policy making process is not always linear, research evidence is not always deemed as important as other policy factors, such as the policy maker’s values, anecdotes or personal experience (Brownson, Chiriqui, Stamatakis, 2009).

In summary, this policy factor has been determined as a facilitating policy factor in this case because at least one decision maker publically attributed his knowledge of the research as the reason he chose to vote in favor of the ordinance.

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\(^3\) Presumed to be the notebook entitled *El Paso Public and Workplace Smoking Restriction Ordinance : El Paso City-County Board of Health 2001*
VII. Concerns Over Fiscal Implications

The monetary or fiscal aspect of the public policy process cannot be over-looked as concern for taxes and perceived loss of business revenue are often considered barriers to adoption of comprehensive municipal smoking bans. The budgets allotted to government programs and services, generated by taxes are crucial to the political process. Although the costs of implementing or neglecting to implement certain policies are often a focal point of consideration among policy makers, Kingdon argues that when there is little or no other reason to oppose a policy alternative, fiscal or budgetary concern can be used as means to “side step” un-favored proposals (Kingdon, p.108)

An April 3, 2001 El Paso Times article reported that the El Paso Restaurant Association approached the board of the El Paso City County Health and Environmental District proposing a compromise that would ban smoking only in establishments that didn’t serve alcoholic drinks and beer, which according to their numbers would have been 764 of El Paso’s 1,663 total bars and restaurants. The health board did not compromise, maintaining the stance that smoking is unhealthy (Gilot, 2001).

The city council meeting minutes dated June 26, 2001 (pg 23-31) provide detailed transcription of the discussion presented for and against the policy. According to the transcript, Representative Jan Sumrall was the first to recommend a revision to the ordinance, the removal of Chapter 9.50.060 entitled Reasonable Distance. The chapter would have prohibited people from smoking within 25 feet away of entryways. After further discussion, Representative Cook expressed that as a former smoker he understood both sides of the issue, but he too would only support the ordinance if the “25 foot rule” was omitted. Representative Escobar then stated that he had heard requiring ventilation systems or smoking rooms would have negatively affected smaller restaurants. He then proceeded to ask Fred Jackson, of the El Paso Restaurant Association, if he would like the 25 foot stipulation removed to allow for outdoor smoking in patio settings. Mr. Jackson responded that many restaurants already had patios. After it was determined by Representative Escobar and Mr. Jackson that accommodating outdoor smoking would be
a cheaper alternative to ventilation systems or smoking rooms, Escobar also recommended the removal of the 25 foot rule. He concluded that he was convinced the rest of the nation was moving toward banning smoking.

Representative Sariñana requested four provisions: for the policy to be communicated to all employees within four weeks of acceptance, removal of the 25 foot rule, posting of signs indicating implementation time frame, and that the ordinance take effect on January, 2, 2002. He also requested that the airport be included as a protected location. Representative Rodriguez accepted his suggestions, especially the deletion of the 25 foot rule.

Clarifications were then made regarding the suggestions made by Representative Sariñana and Mayor Caballero stated that the ordinance could be amended in the future if necessary. His final statement was recorded as being one of congratulations because this action would demonstrate that El Paso’s border location would not hinder the city from taking the lead in this effort, as it had been progressive in Civil Rights issues. The final vote resulted in seven Ayes and one Nay from Representative Cobos. The Mayor did not vote (City of El Paso Regular Council Meeting Minutes, 2001).

Though it was not initially given great consideration during the discussion according to the city council meeting minutes, the City Attorney warned of the potentially inhibiting factor that ironically allowed for the passage of the ordinance. He cautioned that removing the 25 foot stipulation would make the policy’s language vague. The language also did not outline indoor air protection in establishments such as “hookah bars” which have since cropped up inside restaurants and as stand-alone facilities within the City of El Paso. The ordinance does provide detailed description of where limited smoking is allowed within specific indoor venues after meeting special criteria (Appendix I).

As progressive cities now move to strengthen smoke free polices to include outdoor spaces, the fiscal pressure still presents as a critical policy factor. For example, California has had the opportunity
to experience and document community backlash from beach towns, especially areas in which there is heavy pedestrian foot traffic, people attending outdoor venues such as county fairs, farmers markets, parades, and promotional events in response to proposed outdoor smoking bans. Unfortunately, the literature suggests those and indoor air policies are still being met with resistance from businesses and opponents that place fiscal pressures on elected officials to reject the bans (Satterlund, Cassady, Trieber, and Lemp, 2010).

Fiscal pressure was initially identified as a potentially inhibiting political factor as opposition to these types of policies is often enough to keep the issue from the agenda. However, when a consensus was reached among the council members in support of the proposal to cater to business owners who were willing to accommodate smoking patrons in outdoor area patios, fiscal pressure became the key policy factor which facilitated the ordinance’s adoption in 2001.

In summary, this review has identified seven facilitating and corresponding potentially inhibiting policy factors that may have played a role in El Paso’s experience which were supported by the existing documentation. The factors identified in this work are supported within the peer–reviewed literature as recognized elements of policy development and agenda setting processes. As noted they included an organized coalition, liberal ideology, public support, media, personal experience, knowledge of research, and fiscal implications.

4.2 Limitations

Objectivity

The purpose of this investigation was to identify some of the political factors that could explain how the El Paso smoke free ordinance passed in its time and setting. The first challenge was to determine a.) What was considered a political factor or associated event and b.) If the factors and events identified could collectively be agreed upon as having been inhibiting or facilitating to the policy
process. Because this was a politically charged event that can be viewed as a successful intervention ten years later, there was concern that by opting to focus solely on published accounts of the events as sources of data it would limit the quality of data obtained.

The content analysis method has been criticized as not often meeting scientific standard within the research arena. It has also been stated that this type of qualitative inquiry runs the risk of not producing innovative research when conducted in a deductive method (Neuendorf, 2002). Although this may apply in this case, these issues were addressed by identifying recognized policy factors before the assessment began.

Generalizeability is a limitation that is an inherent consideration in qualitative case study research. Although the policy factors identified have been recognized in the literature, the way in which these factors integrated and unfolded in 2001 is specific to this case.

The nature of the “data” itself was also considered a limitation in that the study relied on a few key sources of print media only. There might have been political factors that could have been determined by other means or methods of data collection. However, the methodology utilized in this investigation can be replicated through additional study and research. There is no guarantee that identifying all or similar factors in place in another community will replicate the outcomes the Clean Indoor Air Ordinance experienced in El Paso. However utilizing a theoretical guide for policy planning along with a model policy then enables advocates to base their efforts in a best practice model will facilitate a wise investment in resources and time.

4.3 Strengths

While it can be speculated that having interviewed witnesses, former coalition members and policy makers might have negated, supported or identified additional factors unaccounted for in this research, ultimately the methodology employed in this study demonstrated a cost effective, streamlined
and reasonably feasible method through which the factors identified remained undistorted over the passage of time.

This study has contributed a method in which to examine potential health policy strategy utilizing theory and core recognized policy factors as basic indicators from which to develop needs assessments, key stakeholder interviews and justification for keeping deliberate documentation of how the policy process progresses over time and why.
CHAPTER 5 CONCLUSIONS

5.1 Conclusion

Although there may have been other political factors that the newspaper articles, meeting
minutes and peer reviewed articles would not have been able to clearly identify, the process of
thoroughly reviewing those sources to identify predefined political factors in addition to utilizing a
recognized agenda setting framework as a theoretical guide, a richer scope and deeper understanding of
this public health victory has been provided. In summary, the main political factors (as defined by
Wakefield, 2011) described how (1) an organized and active Smoke Free Paso del Norte Coalition, (2) a
general liberal political ideology, (3) increasing public support (4) media coverage, (5) personal
experience, (6) knowledge of the research, and (7) fiscal pressures and compromise, were the main
political factors identified in this policy process.

Additionally, this retrospective case study of secondary data identified evidence to support
Kingdon’s Multiple Streams Framework by describing how factors pertaining to state and local politics,
the indoor smoking problem and the best policy solution worked together, or “coupled” as detailed in the
preceding evidence between 2000 and 2001 to not only get the comprehensive smoking ban amendment
on the El Paso City Council agenda, but to also successfully pass it.

5.2 Recommendations

As Texas has yet to enact a state-level indoor smoking ban of public places, there are
municipalities such as Horizon City, Clint, and Vinton, Texas that do not provide comprehensive
municipal level clean indoor air protection from environmental tobacco smoke. Until then, the push to
enact such laws in those and other unprotected municipalities must continue. It is therefore anticipated
that this study has provided advocates, decision makers, policy makers and researchers a compelling
impetus to invest in the study of the these general factors and the political climate in which they exist in
each community to determine their potentially inhibiting and facilitating impact during the strategic planning and early grassroots phases of their campaigns.

A considerable amount of research documents how lessons learned and best practices identified from the realm of tobacco prevention and control are being analyzed for their applicability towards policy alternatives for issues of obesity prevention and other chronic disease prevention policy and environmental action. This case study demonstrated that although the language of the smoking ordinance itself was only slightly modified, it was the policy factors identified which theoretically facilitated its passage. Model language is both necessary and influential in policy formation. However in cases where the problems are different and cannot be solved through adaptation of the language of one policy for another, ultimately, it is the understanding of the policy process itself which provides the greatest opportunity to utilize lessons learned and best practices.

As was previously noted, there are areas within this issue which will greatly benefit from continued research endeavors. The literature reviewed for this study identified the impact the media messages play on decision makers directly and the need for researchers to engage with policy makers by working with lay citizens as messengers as two prime opportunities for further study. Indeed, as the complexity of this study itself also indicates, there is a need for more deliberate translational research to be conducted as the policy process is happening to capture as many aspects and perspectives as possible and to inform future policy actions.

I wish to reflect upon two main lessons learned. The first is that it is important to be aware of the potential policy factors before initiating policy change campaigns and investing scarce resources taking action in a resistant and unlikely climate. Second, it is important to recognize and harness the information available from sources such as print media because often times, it will be all that is available to help advocates assess the policy climate when time, staff and funds cannot be allocated to completing extensive focus group, surveys, or other methods.
LIST OF REFERENCES


Cruz, L. (2002, July 3). Police report little resistance to smoking ordinance, some bars say ban has crippled business. El Paso Times, pp. 1A-B.

Eisenberg, M., McCotter, O., & Sciacca, J. (2010). But will I get re-elected? What happens to local level policy makers who support clean indoor air laws? Health Promotion Practice, 11(6), 845-851.


APPENDIX

I. El Paso Ordinance §01487
ORDINANCE NO. 014878

AN ORDINANCE AMENDING CHAPTER 9.50 (SMOKING IN PUBLIC PLACES), BY ADOPTING A COMPREHENSIVE REVISION OF CHAPTER 9.50 (PUBLIC AND WORKPLACE SMOKING RESTRICTIONS)

WHEREAS, numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma and emphysema; and

WHEREAS, there is scientific research linking ETS with heart disease, responsible for an estimated 62,000 coronary heart disease deaths annually in the United States due to ETS exposure. ETS carcinogens and poisons have been identified in the body fluids of non-smokers with special risk posed to children, the elderly, food service employees and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, ETS exposure has also been causally associated with developmental, respiratory, carcinogenic and cardiovascular effects, including fatal outcomes such as sudden infant death syndrome; and

WHEREAS, Tobacco use is the single largest cause of preventable death in Texas, accounting for an estimated 26,427 deaths in Texas in 1995; each year killing more Texans than alcohol, AIDS, heroin, auto accidents, suicides, handguns, murders and fires combined (20% of all deaths in Texas); and

WHEREAS, the simple separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to ETS, given that no safe level of exposure to carcinogens has been found; and

WHEREAS, accordingly, the City Council recognizes that ETS poses a serious public health hazard, that nonsmokers need protection from ETS exposure and that therefore, regulation by the City Council of the burning of tobacco in public places and places of employment is imperative in order to protect the public health and welfare of the citizens of the City of El Paso;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO,

1. That Chapter 9.50 of the El Paso Municipal Code be amended in its entirety and is superseded by the following new Chapter 9.50 (Public and Workplace Smoking Restrictions) which shall read as follows:

ORDINANCE NO. 014878
Chapter 9.50

PUBLIC AND WORKPLACE SMOKING RESTRICTIONS

Sections:

Article I. General Provisions
Sec. 9.50.010 Purpose
Sec. 9.50.020 Definitions

Article II. Prohibition of Smoking
Sec. 9.50.030 Prohibition of Smoking in Public Places
Sec. 9.50.040 Prohibition in Places of Employment
Sec. 9.50.050 Additional Declaration of Non-smoking Establishments
Sec. 9.50.060 Reserved
Sec. 9.50.070 Application of Article to City Owned Facilities

Article III. Where Smoking Is Not Regulated
Sec. 9.50.080 Private and Public Places

Article IV. Signs
Sec. 9.50.090 Posting of Signs

Article VI. Public Health Education
Sec. 9.50.100 City-County Health and Environmental District Program

Article VII. Enforcement, Violations and Penalties
Sec. 9.50.110 Enforcement
Sec. 9.50.120 Non-retaliation
Sec. 9.50.130 Violations and Penalties
Sec. 9.50.140 Other Applicable Laws
Sec. 9.50.150 Severability
Sec. 9.50.160 Effective Date
Article I. General Provisions

Sec. 9.50.010 Purpose

The purpose of this chapter is to (1) improve and protect the public’s health by eliminating smoking in public places and places of employment; (2) guarantee the right of nonsmokers to breathe smoke-free air; and, (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

Sec. 9.50.020 Definitions

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A "bar" includes those facilities located within a hotel, motel or other similar transient occupancy establishment.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

C. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any persons who volunteers his or her services for a non-profit entity.

D. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

E. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

F. "Food Establishment" means food product or food service establishments.

G. "Place of Employment" means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
II. "Private Place" means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences; private social clubs or personal automobiles. A privately-owned business, open to the public, is not a "private place".

I. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks; educational facilities; health facilities; laundromats; public transportation facilities; reception areas; production and marketing establishments; retail service establishments; retail stores; theaters and waiting rooms. A private residence is not a "public place".

J. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

K. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

L. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or combustible substance in any manner or in any form.

M. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Article II Prohibition of Smoking**

**Sec. 9.50.030 Probation of Smoking in Public Places**

A. Smoking shall be prohibited in all enclosed public places within the City of El Paso, including, but not limited to, the following places:

1. Elevators

2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.

3. Buses, bus terminals, taxicabs, train stations, airports and other facilities and means of public transit under the authority of the City of El Paso, as well as ticket, boarding, and waiting areas of public transit depots.

4. Service lines.

5. Retail stores.
6. All areas available to and customarily used by the general public in all businesses and
non-profit entities patronized by the public, including but not limited to, attorneys’
offices and other offices, banks, laundromats, hotels and motels.

7. Food Establishments, nightclubs and bars.

8. Galleries, libraries, museums and zoo facilities and grounds.

9. Any facility which is primarily used for exhibiting any motion picture, stage, drama,
lecture, musical recital or other similar performance, except that performers may smoke
when the smoking is part of a stage production.

10. Sports arenas and convention halls, including bowling facilities.

11. Every room, chamber, place of meeting or public assembly, including school
buildings under the control of any board, council, commission, committee, including joint
committees, or agencies of the City of El Paso or any political subdivision of the State
during such time as a public meeting is in progress, to the extent such place is subject to
the jurisdiction of the City of El Paso.

12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including,
but no limited to, hospitals, clinics, physical therapy facilities, doctors’ offices, and
dentists’ offices.

13. Lobbies, hallways, and other common areas in apartment buildings, condominiums,
trailer parks, retirement facilities, nursing homes, and other multiple-unit residential
facilities.


15. Bingo games.

Sec. 9.50.040 Prohibition of Smoking in Places of Employment

A. It shall be the responsibility of employers to provide a smoke-free workplace for all
employees.

B. Each employer having any enclosed place of employment located within the City of El Paso
shall adopt, implement, make known and maintain a written smoking policy, which shall
contain the following requirements.
Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

C. The smoking policy shall be communicated to all employees within four (4) weeks of its adoption.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 9.50.050 Additional Declaration of Non-smoking Establishment

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a non-smoking establishment.

Sec. 9.50.060 Reserved

Sec. 9.50.070 Application of Article to City-Owned Facilities

All enclosed facilities owned by the City of El Paso shall be non-smoking at all times notwithstanding other provisions of this article.

Article III. Where Smoking Is Not Regulated

Section 9.50.080 Private and Public Places

A. Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

1. Private residences, except when used as a child care, adult day care or health care facility.

2. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.

3. Retail tobacco stores in stand alone physical facilities.

4. Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while places are being used for private functions except while contracted food or beverage service functions are taking place (including set-up, service and clean-up activities or when the room is used for exhibit activities).
5. Outdoor places of employment except those covered in Sec. 9.50.050.

Article V. Signs

Sec. 9.50.090 Posting of Signs

A. The owner, manager or other person having control of such building or other area where smoking is prohibited by this article shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited.

B. Such "No Smoking" signs shall have bold lettering of not less than 1 inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

C. All ashtrays and other smoking paraphernalia shall be limited in facilities to that required for the enforcement of extinguishing of smoking materials in public places.

Article VI. Public Health Education

Sec. 9.50.100. City-County Health and Environmental District Program

The City-County Health and Environmental District shall promote the purposes and requirements of this ordinance to the public affected by it, and to guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Article VII. Enforcement, Violations and Penalties

Sec. 9.50.110 Enforcement

A. Enforcement of this article shall be implemented by the El Paso City-County Health and Environmental District, Building Services, Fire and law enforcement agencies.

B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the City of El Paso.

C. Any person may register a complaint under this chapter to initiate enforcement with the El Paso City-County Health and Environmental District.

D. The Health District, Building Services or the Fire Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.
E. Any owner, manager, operator or employee of any establishment regulated by this article shall be responsible for informing persons violating this article of the provisions through appropriate signage.

F. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

Sec. 9.50.120. Non-retaliation

No person nor employee shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke free environment afforded by this article.

Sec. 9.50.130. Violations and Penalties

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with all of its provisions, except for violations noted in section B, below.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

C. Any person who violates any provision of this article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars ($100.00) for the first violation.
2. A fine not exceeding two hundred dollars ($200.00) for a second violation within a one (1) year period of the first violation.
3. A fine not exceeding five hundred dollars ($500.00) for an additional violation within a one (1) year period of the first violation.

Sec. 9.50.140. Other Applicable Laws

This article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 9.50.150. Severability

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.
Sec. 9.50.160. Effective Date

This article shall be effective on and after January 2, 2002.

PASSED AND APPROVED this 26th day of June, 2001.

CITY OF EL PASO

Hon. Raymond C. Caballero
Mayor

ATTEST:

Carole Hunter
City Clerk

APPROVED AS TO FORM:

Reginald Bussey
Assistant City Attorney

APPROVED AS TO CONTENT:

Jorge C. Magaña, M.D., F.A.A.P., Director
City-County Health & Environmental District

APPROVED:

John M. Tune, M.D.
Chairperson
El Paso City-County Board of Health

ORDINANCE NO. 014878
CURRICULUM VITA

Xochiquetzalli Gamboa is one of the three daughters of Hermila Ramos Kruhalski and Leon Stanley Kruhalski. She is the mother of Alejandro Hermilo Gamboa. Born on December 9, 1976 in El Paso, Texas, she has always lived and worked in the El Paso community. After earning her high school diploma from El Paso High School in 1995 she was employed as a food service worker at a local restaurant. Ms. Gamboa earned a certificate in clinical and administrative medical assisting from Career Centers of Texas in 1998. Between 1998 and 2001 she worked in various positions as a community health worker for the Region 19 ESC Head Start Program. She went on to earn a Bachelor of Science degree in Health Promotion, with a Minor in Community Health, from the University of Texas at El Paso in 2006. Ms. Gamboa worked for the American Cancer Society as tobacco prevention and cessation program manager from 2006 to 2010. Ms. Gamboa was accepted to the University of Texas at El Paso’s Master of Public Health program in the fall of 2009. She completed a public health practicum at the United States - Mexico Border Office of the Pan American Health Organization / World Health Organization, in the area of Non-Communicable Disease Prevention. She is currently a contracted consultant for the PAHO/WHO USMBO.

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This thesis was typed by the author.