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TOBACCO CONTROL ACTIVITIES AND THE TOBACCO INDUSTRY'S RESPONSE IN CALIFORNIA COMMUNITIES, 1990-1991

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TABLE OF CONTENTS

Executive Summary	2
Introduction	3
Methods	4
Creating the Smokers' Rights Movement	4
The Beverly Hills Restaurant Association	7
Los Angeles	8
Sacramento	11
Foundation for Action	12
The Ordinance	13
The Referendum	15
Implementation	18
Lodi	19
Metastasis	23
Conclusions	24
Acknowledgements	27
References and Notes	28

EXECUTIVE SUMMARY

Recent local campaigns in California illustrate the tobacco industry's strategy at the local level and its successes and failures. At first, the tobacco industry tried to use the same lobbying techniques at the local level that worked at the national level, with little success. To counter the nonsmokers' rights movement, the tobacco industry has developed a game plan that can be applied at the local level. These case studies reveal that:

- The most intensive effort by the tobacco industry is the organizing of smokers into a "grassroots" movement to oppose local legislation.
- A few key people with ties to the tobacco industry are appearing in communities throughout California to ward off local smoking ordinances.
- These individuals have attempted to conceal their tobacco industry ties by creating front organizations.
- Tobacco industry interests played a significant role in creating pseudo-business coalitions to fight specific ordinances.
- The industry and front groups make unsubstantiated claims to sway public and decision-maker opinion.

In contrast to the tobacco industry's systematic activity, the tobacco control forces follow many different paths, from cheerleading on the sidelines and making very little effort, to calling the plays and guiding the decision-makers through potential obstacles. Despite the superior financial resources of the tobacco industry, the outcome in an effort to enact a specific local ordinance depends not on the tobacco industry, but on how seriously the health advocates mobilize in support of the local legislation. When the health community makes a serious commitment of time and resources, it wins. When the health community fails to make such a commitment, the tobacco industry prevails, more by default than the fact that it has superior financial resources.

This report is an extended version of a paper published concurrently in the Journal of the American Medical Association: B. Samuels and S. Glantz. The Politics of Local Tobacco Control. JAMA 266:2110-2117, 1991.

INTRODUCTION

Before the emergence of the nonsmokers' rights movement in the mid 1970's, virtually all legislative and regulatory activity related to tobacco took place at the national level. The tobacco manufacturers combined their money and lobbying skills with the influence of tobacco state Congressman and Senators to maintain an impressive record of political victories.^{1,2} In contrast, the nonsmokers' rights movement emerged as a grass-roots campaign around the country.³ It was poorly organized and had almost no money. Originally these groups concentrated their energies at the state level, particularly in California. While having success in raising awareness about nonsmokers' rights, the movement could not compete with the fiscal resources of the tobacco industry.^{4,5}

In 1981, after several unsuccessful attempts to enact state legislation in California, the grass-roots group California GASP was reorganized to form Americans for Nonsmokers' Rights (ANR)⁶ to shift the focus away from expensive state and national efforts towards local legislation. They hoped that local legislators would be more sensitive to constituents and less responsive to campaign contributions and pressure from out-of-town tobacco industry lobbyists. This strategy succeeded. By 1986, more than 75 ordinances had been enacted in California alone.⁷ Nationwide by 1991, over 440 local ordinances had been passed.^{7,8,9}

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financial resources of the tobacco industry, the outcome in an effort to enact a specific local ordinance depends not on the tobacco industry, but on how seriously the health advocates mobilize in support of the local legislation. When the health community makes a serious commitment of time and resources, it wins. When the health community fails to make such a commitment, the tobacco industry prevails, more by default than the fact that it has superior financial resources.

METHODS

These case studies were conducted by attending city council hearings, reviewing newspaper articles, analyzing financial disclosure statements, reviewing information distributed by local health advocates, studying information distributed by the tobacco industry and their associated groups, surveying restaurant owners, and interviewing local elected officials, health agency employees, tobacco control activists, local government officials, tobacco industry lobbyists, persons associated with the tobacco industry, smokers' rights activists, local business representatives and journalists.

CREATING THE SMOKERS' RIGHTS MOVEMENT

The emergence of nonsmokers' rights and environmental tobacco smoke (ETS) as important public issues, particularly since the first Surgeon General's report on passive smoking in 1986¹⁰ has created a serious problem for the tobacco industry. The 1990 Environmental Protection Agency (EPA) report¹¹ identifying ETS as a Class A (known human) carcinogen, and the 1991 report that ETS causes heart disease,¹² have increased popular pressure for restrictions on smoking. Increasing restrictions on smoking in public to protect nonsmokers from the toxins in ETS undermines the social acceptability of smoking. Decreasing the social acceptability and mandating restrictions on where and when one can smoke, in turn, discourages children from starting to smoke and facilitates an adult's decision to cut down or stop smoking.¹³ While generating significant health benefits for smokers and nonsmokers, this drop in cigarette consumption translates into fewer sales and lower profits for the tobacco industry.¹⁴

As the tobacco control groups, backed by increasingly compelling scientific evidence, have become more formidable adversaries at the local level, the tobacco industry recognized the need to place more emphasis on battling local legislation. In 1986, Raymond Pritchard, Chairman of the Board of Brown and Williamson Tobacco said,

Our record in defeating state smoking restrictions has been reasonably good. Unfortunately, our record with respect to local measures . . . has been somewhat less encouraging. We must somehow do a better job than we have in the past in getting our side of the story told to city councils and county commissions. Over time we can lose the battle over smoking restrictions as decisively in bits and pieces -- at the local level -- as with state or federal measures¹⁵ [emphasis added].

Since then, the tobacco industry has moved aggressively to counter the popular local pressure for smoking restrictions by seeking to develop its own grass-roots "smokers' rights" movement. In 1990, RJ-Reynolds Chief Executive, James Johnston, stated, "This is something I wish we had done a decade ago."¹⁶

In attempting to counter grass-roots pressure for nonsmoker protections, the tobacco industry had to confront the fact that it had no credibility at the local level. A national poll conducted for the Tobacco Institute in 1978 highlighted the problem.¹⁷ It concluded:

Favorable attitudes toward the tobacco industry are at their lowest ebb.

More people say they would vote for than against a political candidate who takes a position favoring a ban on smoking in public places.

Furthermore, a recent public opinion poll found that out of nine nationally recognized interest groups, the Tobacco Institute received the most unfavorable rating.¹⁸ In fact, another study done for the Tobacco Institute found that overt industry involvement against a proposal may increase political support for the measure.¹⁹ As a result, the tobacco Institute's lobbyists try to stay out of public view. For example, the Tobacco Institute's West Coast lobbyist, Ron Saldana, attends hearings on local smoking control ordinances,²⁰ but rarely testifies publicly; when asked why, he said, "I've learned from experience that as soon as I'm identified as a representative of the Tobacco Institute, I lose all credibility. They just sneer us away . . . So I try to work behind the scenes whenever I can."²¹ The industry-created "smokers' rights" groups provide a local identity and mechanism for funnelling tobacco industry resources into the fight against local legislation without the overt appearance of the tobacco industry.²²

Philip Morris and RJ Reynolds, the two dominant U.S. cigarette manufacturers, both have active programs to identify smokers and mold them into a political force to counter genuine grass-roots pressure for nonsmoker protections. These programs employ major computer data bases, professional public relation firms, sophisticated telephone and mail campaigns, and glossy publications.²³ Smokers have been identified over the past few years through rebate coupons and correspondence with the tobacco companies.¹ Philip Morris has a data base with 12 million smokers²⁴ that includes information on their jobs and history of political involvement.¹ The company will not disclose how much money they have devoted to the smokers' rights effort.²⁵

The manufacturers use publications such as Philip Morris Magazine and newsletters such as Smokers' Advocate (Philip Morris) and Choice (RJ Reynolds) to recruit and "educate" smokers. Last year RJ Reynolds hired former White House head of communications, Thomas Grisom, to run a direct-mail effort to teach smokers how to fight local antismoking initiatives.²⁶ In 1988, Philip Morris Magazine claimed 11 million non-paying readers, making the magazine, according to the company, the nation's fifth largest periodical.²⁷

Through these publications, smokers are encouraged to become a political force by

signing petitions, writing letters, making phone calls, and showing up as a group at city or county meetings where smoking restrictions are being discussed. Toll free telephone numbers are used to assist individuals in reporting pending legislation and mobilizing opposition. When the companies receive notice of a proposed ordinance, an "Action Alert" or "Priority Letter" is sent out to the local people on the database to encourage action against the ordinance.

Time permitting, the recipient is asked to sign letters with suggested text and forward them to the appropriate public official in pre-addressed, stamped envelopes. If time is short, the companies get permission from individuals to sign and send the letters in their behalf.¹ The database is also used to contact individuals through phone banks in areas where an ordinance is being considered, to encourage them to attend the hearings and express opposition to the ordinance.²

In the past three years, RJ Reynolds and other tobacco companies claim to have established at least 600 smokers' rights groups across the country.²⁷ This organizing is done through the mail and using a network of political consultants. For example, two years ago smokers in San Antonio were invited to attend a meeting with Rick Wrighter, a RJ Reynolds representative sent from Denver, Colorado. Wrighter explained to the group that similar meetings had been held in 230 communities across the United States in 1989 alone. According to the report,

The purpose of the meetings is to convince volunteers that smoking is a rights issue and train them to call an 800 number any time they learn their city or town is on the brink of passing anti-smoking measures. [RJ] Reynolds is to be kept out of it, the media to be told the smokers have formed their own group, and would go to the wall for their right to puff.²⁸

The sponsoring tobacco manufacturer pays for the organizational meetings, but will not disclose how much money is spent mobilizing smokers.²⁹

The smokers' rights campaign is clearly a new fixture on the tobacco control scene, which must be anticipated in any tobacco control effort. It is also reasonable to expect the tobacco industry to continue to build its data base and become more sophisticated in its use.

In addition to establishing smokers' rights groups, referendum campaign organizations have been created in communities where strong tobacco control measures have passed (San Francisco 1983, Lodi 1990, Sacramento 1990) to attempt to overturn ordinances enacted by the local legislative body. By forcing a referendum, the industry seeks to move decision-making away from the elected body which approved the ordinance to a vote by the public, in hope that the industry's superior financial and advertising clout might influence the decision process. To date, however, all attempts by the tobacco industry to overturn nonsmokers' rights legislation by referendum have failed.

THE BEVERLY HILLS RESTAURANT ASSOCIATION

Another tactic the tobacco industry has developed is the creation of groups with names suggesting that they are independent business or restaurant coalitions to lobby local legislators on specific ordinances. These groups typically do not divulge the nature or extent of their ties to the tobacco industry. The events in Beverly Hills illustrate how the industry has used one such organization.

In 1987 the Beverly Hills City Council proposed a 100 percent smokefree requirement for the city's restaurants. This would have only been the second such ordinance in the country and the first in California. For the proposal to become law, the Council had to approve it on two separate readings. At first reading, the ordinance passed without strong public opposition. Between the first and final City Council vote, the Tobacco Institute hired a political consultant, Rudy Cole, to create the Beverly Hills Restaurant Association (BHRA) to oppose the ordinance.²⁹ To drum up membership for BHRA, Ron Saldana, the Tobacco Institute's regional director, spoke to the local restaurant owners and the Chamber of Commerce to "make them aware of the potential impact the ordinance will have on the community."³⁰ The Tobacco Institute's role in creating the BHRA was not publicly disclosed at the time.

At the second reading, Cole appeared as spokesperson of the newly formed Beverly Hills Restaurant Association to protest the ordinance. Nonetheless, the City Council unanimously voted in favor of a smokefree restaurant ordinance.

Michael Kantor, one of the most prominent attorneys in the well-connected law firm of Manatt, Phelps, Rothenberg and Phillips, was hired to represent the BHRA. The BHRA attempted to get a temporary court order to stop the implementation of the ordinance. The effort failed.³¹ Kantor then filed a lawsuit against the city claiming that the ordinance is unconstitutional, discriminatory, and disastrous for business. This action also failed.³² The legal bills for BHRA were paid by the Tobacco Institute.³³

Having failed to void the law in court, the BHRA complained that restaurants had suffered a 30 percent drop in business after the ordinance went into force.³⁴ While being touted widely in tobacco industry publications, this claim was never challenged or investigated by the health community, despite the fact that only about 25% of California adults smoked at that time. As a result, the claim of a serious impact on business was widely accepted. Four months after the policy was enacted, the City Council, at the urging of the BHRA, voted 5 to 0 to allow restaurants to establish smoking sections of up to 40 percent of their seating. Another factor in the Council's decision to alter the ordinance was that people were ignoring the law, which relied on restaurant customers to make citizens' arrests of violators. Vice Mayor Donna Ellman stated, "The ordinance was poorly drafted. There was, in effect, no ban at all -- just lip service."³⁵

While this decision represented a setback for clean indoor air advocates, the 60 percent minimum nonsmoking requirement still left Beverly Hills with the strongest ordinance in the state at that time. Nevertheless, the tobacco industry could claim a victory in that Beverly Hills

represented the first time a nonsmokers' rights ordinance on the books had been weakened after it was enacted. The fact that the industry worked through its Beverly Hills Restaurant Association to mobilize local restaurants rather than lobbying directly through the Tobacco Institute played an important role in its success. The failure of the health community to challenge the claim that the ordinance reduced restaurant business by 30% contributed to the effectiveness of the industry strategy.

LOS ANGELES

Three years later the Los Angeles City Council considered an ordinance similar to the original Beverly Hills ordinance, which would have prohibited smoking in all restaurants. In 1990 Councilman Marvin Braude introduced the ordinance because of concern raised by the EPA report which identified ETS as a Class A carcinogen.¹¹ The tobacco industry's campaign against the ordinance illustrates the effective use of both a front group and direct lobbying by the tobacco industry. These activities by the tobacco industry, combined with the failure of the health community to organize effectively in support of the ordinance, contributed to its failure.

Just as in Beverly Hills, no Los Angeles restaurant trade organization existed prior to the ordinance's introduction. During the summer of 1990, after the ordinance was proposed, Rudy Cole created Restaurants for a Sensible Voluntary Policy (RSVP).¹² The tobacco industry's involvement was not disclosed. However, after the final City Council vote defeating the proposal, Cole, under pressure from the media, acknowledged that RSVP received money from Philip Morris and the Tobacco Institute but refused to say how much.¹³ The Tobacco Institute also refused to disclose the amount of money spent in Los Angeles.¹⁴

RSVP put together a powerful team to fight the proposal. The group hired the same international public relations and advertising firm that the Tobacco Institute,¹⁵ Philip Morris¹⁶ and RJ Reynolds¹⁷ use, Ogilvy & Mather, and the same law firm representing both the Beverly Hills Restaurant Association during 1987 and Philip Morris in Washington, D.C.: Manatt, Phelps, Rothenberg and Phillips. In fact, at the same time the Los Angeles office of Manatt Phelps was representing RSVP, The Washington, D.C. office was busy dealing with the EPA on behalf of Philip Morris, trying to head off the EPA report that motivated Councilman Braude in the first place.¹⁸

The tobacco industry also attempted to mobilize local smokers in Los Angeles. During August, a week prior to the first committee hearing, Philip Morris sent a "Priority Letter" to local smokers listed in the company's data base urging them to contact the mayor and City Council members by phone or "handwritten" letter to express opposition to the "unprecedented, discriminatory legislation." The addresses and telephone numbers of the elected officials were included, as well as "talking points" that could be used in communications. A toll free number was given to answer any questions.

On August 13, 1990, the Environmental Quality and Waste Management Committee, which Councilman Marvin Braude chairs, and the Arts, Health and Humanities Committee

jointly considered the proposal to make all restaurants smokefree. RSVP recruited restaurant owners and civic leaders, such as the President of the Los Angeles Business Council, to testify at the hearings. Representatives of health groups, including the American Lung Association, American Cancer Society and American Heart Association, testified in favor the ordinance. The committee voted three to one in favor of the proposal, directing the city attorney to write an ordinance to present to the full council.

Having lost the first vote, Cole concentrated on molding the restaurants into a political force. He recruited members through mass mailings, personal visits and phone calls. In the month of September, RSVP conducted a letter writing campaign for restaurants to contact the City Council members. The letters were compiled and submitted to all the council members the day before the vote. The text of most of the letters was exactly the same; all the restaurant owner had to do was sign and post it. RSVP also sent out petitions to restaurants for employees and customers to sign in opposition to the proposal.

To persuade Council members that such an ordinance would adversely affect business, RSVP hired Laventhol & Horwath, one of the six largest national firms of Certified Public Accountants,⁴¹ to conduct an economic impact study on the proposed ordinance.⁴² The report was made available to the Council the day before the vote. The study, comparing sales of Beverly Hills restaurants during the three months of a smokefree ordinance in 1987 and the same three months of the previous year, found an average decrease in business of 6.7 percent.⁴³ The discrepancy between this figure and the 30 percent that the tobacco industry continues to use was never questioned or explained. Based on the Beverly Hills data,⁴⁴ the study projected a 5.5 percent decline in sales in Los Angeles and 3,300 fewer jobs. According to the report, Los Angeles could also lose about \$1.5 million a year in sales tax revenues and \$148 million in business. Councilman Braude disputed the study, "Seventy-five percent of people who go to restaurants don't smoke and if they didn't have their taste buds deadened by cigarette smoke, patronage would go up, not downhill."⁴⁵

At the public hearing on the ordinance on October 16, 1990, RSVP claimed to represent 1,000 of the approximately 8,000 restaurants in Los Angeles. A roster that was provided to all city council members the day before the vote listed only 440 restaurants. In survey of a sample of those restaurants, 20 percent said they were not members of RSVP.⁴⁶ This is an example of an industry front group making unsubstantiated claims.

RSVP funding is also in question. While admitting to taking money from the tobacco industry, RSVP claimed to be financed substantially from its members. Rudy Cole said that there is a membership fee of \$10 for smaller restaurants and between \$100 and \$500 for larger restaurants. However, in a survey of restaurants listed as members of RSVP, only 13 percent said they had contributed money. Thus even if all the restaurants who contributed anything donated the \$500 maximum, this would only yield \$28,600.⁴⁷ To employ an expensive law firm and international public relations firm, in addition to the cost of mailings to restaurants, the Laventhol and Horwath study and Rudy Cole's salary, the budget for RSVP must have substantially exceeded the donations from restaurants. Funding and expenditure disclosure for

RSVP is not required by law because RSVP is representing itself as a business organization, not a lobbying group or campaign organization, so the precise role of the tobacco industry cannot be determined.

In addition to organizing restaurants, various individuals and firms that have been associated with the tobacco industry were active in lobbying against this ordinance. Among them was George Keiffer, an attorney/lobbyist in the Los Angeles Manatt, Phelps, Rothenberg, Phillips office, hired to represent RSVP. Mickey Kantor an attorney/lobbyist with the same firm was also involved in lobbying against the ordinance.⁴⁶ Council members were also contacted by Alma Fitch, a lobbyist on retainer with Philip Morris,⁴⁷ who encouraged a negative vote on the ordinance.⁴⁸ Furthermore, the tobacco industry made campaign contributions to several members of the City Council (Table 1).

Table 1. LOS ANGELES CITY COUNCIL MEMBERS' TOBACCO MONEY AND THEIR VOTE ON PROPOSED RESTAURANT ORDINANCE ^a		
Council Member	Tobacco Contributions	Vote
Nate Holden	\$1000	No
Michael Woo	\$1000	No
Gloria Molina	\$900	No
Richard Alatorre	\$500	Absent
Hal Bernsen	\$500	No
Robert Farrell	\$500	Yes
John Ferraro	\$500	No
Joy Picus	\$500	Yes
Maryin Braude	\$0	Yes
Ermani Bernardi	\$0	Yes
Joan Milke Flores	\$0	Absent
Ruth Galanter	\$0	Yes
Gilbert Lindsay	\$0	Absent
Joel Wachs	\$0	No
Zev Yaroslavsky	\$0	Yes
^a From January 1, 1989 through December 31, 1990. The vote was on October 16, 1990. ^{46, 49, 50}		

On October 16, 1990, the City Council heard testimony on the proposal. Citing the health evidence against ETS, the Los Angeles County Medical Association, the American Heart Association, American Lung Association, the American Cancer Society, and Americans for Nonsmokers' Rights, among others, urged the council to vote for smokefree restaurants.

During the hearing Rudy Cole openly consulted with tobacco industry representatives, including RJ Reynolds consultant Alma Fitch and Tobacco Institute lobbyist, Ron Saldana. Two Ogilvy & Mather employees were present to assist in the planning, pass out press releases and organize a press conference immediately following the vote. In testimony against the ordinance, RSVP organized restaurateurs, business groups and a representative of a hotel and restaurant workers union. RSVP banked heavily on the argument that the smokefree restaurants would cause a drop in business, resulting in layoffs and lost revenue.

The Council voted 6 to 6; proponents fell two votes short of the necessary eight for passage (three council members were absent). The tobacco industry succeeded, via RSVP, in defeating the ordinance.

Los Angeles is an example where an elected official, rather than health proponents, was the key force behind the proposal. Ron Arias, lobbyist for the American Lung Association, attributed the six votes largely to Councilman Braude's efforts, "I've never seen Braude fight that hard."³¹ Dian Kiser, the lobbyist for the American Heart Association, found that one of the problems in Los Angeles is that there was no community-based committee to spearhead support for such measures.³² In fact, a health coalition did not develop to push for the ordinance until the final hours before the vote. In contrast to the voluntary health agencies, the grass-roots lobbying group, Americans for Nonsmokers Rights (ANR) mobilized its membership in a letter writing campaign. This campaign, while not effective enough to secure passage of the ordinance, did influence some votes; Councilman Zev Yaroslavsky stated, "Mail from my constituents is running about 20 to 1 in favor of the ban."³³ "Without the lobbying efforts and the letters, we may have had only Braude and one or two other votes," according to ANR's Mark Pertschuk.³⁴

The lack of sustained activity by the health community contributed to the proposal's defeat. Arias stated that the three voluntary health agencies only spent a day and a half actively lobbying for the ordinance: "If we had two weeks of full time effort, then we could have had more success." If the established health agencies had formed a Los Angeles community coalition and mobilized all their volunteers and members, perhaps the proposal would have passed, despite the effort made by the tobacco industry.³⁵

SACRAMENTO

At about the same time as the Los Angeles vote, the city and county of Sacramento (two distinct political entities) each enacted strong ordinances prohibiting smoking in all public and private workplaces and all public places, including restaurants. In contrast to Los Angeles, where there was ineffectual activity on the part of the health agencies, in Sacramento the

American Lung Association (ALA) prompted the ordinance and took an active role in shaping the law and ensuring its passage.

Foundation for Action

The most significant factor in Sacramento's success in passing a very progressive tobacco control law was the strong connections between the ALA and community leaders. According to community leaders, the Sacramento ALA has a very credible reputation and is known for being active in local issues.³⁶ The ALA has recruited influential civic leaders from various backgrounds to serve on its thirty-five member Board of Directors. It was no coincidence that a County Supervisor, a City Council member, and the chairperson of the Environmental Commission -- individuals who were instrumental in passing the ordinance -- had served as volunteers or staff members of Sacramento ALA. The strength of their influence was illustrated by the pivotal role they played in strengthening the existing smoking ordinance.

Although Sacramento city and county had enacted a uniform smoking ordinance in 1984, in recent years the ALA's legislative committee grew increasingly concerned about the inadequacies of the existing smoking ordinance in light of new information about ETS. The ALA asked the Environmental Commission, an organization responsible for advising the city and county on environmental issues, to address the issue of passive smoking, particularly in regards to smoking in the workplace.

Rob McCray, chairman of the Commission, attorney, and former volunteer for the ALA, appointed a task force which included the three voluntary health agencies (ALA, American Heart Association, American Cancer Society), the Sacramento Restaurant Association (a bona fide organization of restaurants), the Chamber of Commerce (one representative from small business and one from large business), Arco Arena (the indoor sports arena), Pacific Gas & Electric (a major employer), and the airport.

The health advocates on the task force successfully pushed to recommend a total nonsmoking policy in the workplace. They also wanted to increase the percentage of nonsmoking seats in restaurants from a minimum of 10 percent (under the previous ordinance) to 50 percent. The Sacramento Restaurant Association representative was not happy about any further restrictions on smoking in restaurants, but eventually the restaurant association's board of directors settled on a 50 percent nonsmoking requirement for all restaurants.³⁷ Additionally, the task force decided to recommend a smokefree environment for the airport, supported by the airport representative.

The task force recommendations went to the Environmental Commission. The Commission held public hearings on those recommendations. Significantly, the Chamber of Commerce, an organization representing 2,600 local businesses, endorsed the recommendations of the Environmental Commission. McCray was expecting the Chamber to protest the requirement for smokefree workplaces.³⁸ Roy Brewer, president of the Chamber, explained that the organization had invited the Tobacco Institute, the Sacramento Restaurant Association and

the ALA to a committee meeting to decide whether to support the recommendations. The restaurant association expressed support for the 50 percent nonsmoking proposal for restaurants. No strong opposition from businesses about the workplace issue was expressed.⁶⁹ In fact, some business representatives voiced support for the ordinance.⁶⁹ The Tobacco Institute did not attend. With the endorsement by the Chamber of Commerce, the Environmental Commission recommendations went to the City Council and County Board of Supervisors.

The only local group that publicly opposed the Environmental Commission's recommendations was Smokers' Rights of Sacramento, a group that had formed in October, 1988.⁶⁹ On June 12, 1990 the organization sent letters to people in the county urging them to "write a short personal letter to your county supervisor that says smoking bans are unreasonable and current smoking restrictions are tough enough." Each letter included the name, address and telephone number of the supervisor for their district. At a County Board of Supervisors meeting on September 11, 1990 the president of the Smokers' Rights of Sacramento presented 8,300 signatures of persons opposed to the ordinance.⁶⁹

Throughout the process the task force, the ALA and the Environmental Commission kept in contact with the elected officials to find out what provisions would be supported. In addition to providing suggestions based on other cities' ordinances, the task force collected data about the health effects of passive smoking. Fact sheets were compiled and newspaper articles collected to present to the elected officials. Consequently, the decision makers were very aware about the scientific evidence of environmental tobacco smoke and the options being considered.

The Ordinance

At the hearing before the County Board of Supervisors, the tobacco industry flew in some of their "expert witnesses" who frequently testify before legislative bodies. Among those from out-of-town testifying in opposition to the ordinance were Gray Robertson of Fairfax, Virginia, who minimized tobacco smoke as a significant cause of indoor air pollution, David Weeks, a physician from Boise, Idaho, Malinda Sidak, an attorney from Covington & Burling in Washington, D.C., sent to represent the Tobacco Institute, and John C. Fox, an attorney from San Francisco. For unknown reasons, these people only testified before the County Board of Supervisors; they did not appear at City Council hearings.

When it came to voting, County Supervisor Sandy Smoley, a registered nurse and volunteer for the American Cancer Society (ACS), opposed the ordinance, saying during the hearing that if the county approved such stringent measures against smoking then it should also "outlaw alcohol and fatty foods and mandate that everyone ride their bikes."⁶⁹ Supervisor Toby Johnson agreed, "It's almost a 'Big Brother' approach to government."⁶⁹

In contrast, Supervisor Jim Streng, former President of the ALA Board of Directors, who says he is normally one to support the rights of individuals, found the testimony by the health agencies and doctors to be particularly persuasive.⁶⁹ Supervisor Grantland Johnson also cited the health evidence and encouragement by the ALA, along with the ACS and AHA as the key

factors in convincing him that they were dealing with a serious public health issue.⁶⁴ The health coalition made sure supporters of the ordinance showed up at the hearings and that the various health effects were presented by experts in their respective field.

Citing the need to protect the health of workers in the workplace, Supervisor Streng first proposed to strengthen the Environmental Commission's recommendation for restaurants from a 50 percent nonsmoking requirement to a smokefree restaurant policy. Supervisors Illa Collin and Grantland Johnson agreed. "To not be 100 percent is dramatically inconsistent" according to Supervisor Johnson.⁶⁵ Originally, a smokefree restaurant requirement was not advocated by the health coalition because they thought it would be too contentious, thus endangering the entire ordinance. Some of the Council members and County supervisors thought that if environmental tobacco smoke was such a health hazard, the goal should be the elimination of smoking in all public places, including restaurants. Streng said that the Sacramento Restaurant Association, "friends we know and respect," lobbied hard against the proposal. Justifying his vote to make all restaurants smokefree, Streng explained, "We don't want to do anything to hurt their business. I don't believe they will lose business."⁶⁶ Supervisor Johnson, responding to negotiation attempts by the restaurant association, asked, "How can you negotiate public health?"⁶⁷ But the Board of Supervisors did not want to ignore the concerns of the restaurant association. A staging process was proposed for restaurants whereby, during the initial months, the requirement would be 50 percent, stepping up to 75 percent and finally, a 100 percent nonsmoking policy for all restaurants. Staging was seen as a means of allowing customers and restaurateurs to gradually get used to the goal of smokefree restaurants. The restaurant association would not agree to anything more than a 50 percent rule. Upon the recommendation of the Environmental Commission, dining and bar seating were combined in allocating the percentage of total seats for nonsmoking. Thus if a restaurant has 50 seats in the bar and dining rooms, under the 50 percent rule, at least 25 would be nonsmoking. With the 100 percent clause, the net effect is to eliminate smoking from all restaurants, including those with open bar areas, by the end of the staging process.

The health advocates originally took a more mild approach concerning restaurants because they did not think a smokefree restaurant policy was politically feasible at the time. "The elected officials framed the issue. The supervisors and council members felt it was important to act responsibly," giving public health the priority over business concerns, Supervisor Johnson explained.⁶⁸

The City Council had enough votes for a 100 percent smokefree restaurant policy with no staging process. But County Supervisor Streng felt it was important to phase the policy in to allow people to get used to the smokefree goal. The City Council, for uniformity, agreed to go along with the board of supervisors but chose a faster phase-in period for restaurants.

On October 2, 1990 on a 3 to 2 vote, the County Board of Supervisors passed the ordinance. The city passed a nearly identical ordinance by a vote of 8 to 1 a week later on October 9, 1990. The only difference regarded the phase in time for restaurants to become smokefree. The phase-in for the county was 3 years and for the city, 18 months.

Specifically, the ordinances prohibit smoking in:

- all workplaces, public and private
- all enclosed public areas, including stores, banks, theaters, beauty shops, laundromats and recreational facilities
- public areas of hotels and motels except during private functions. Rented rooms are exempt
- restaurants, after a phase in period (18 months for the city, 3 years for the county)
- the airport
- hospitals and health care facilities
- child care facilities

Bars, residences, tobacco stores, and private clubs were excluded.

The combination of encouragement and guidance from the ALA and public officials supportive of tobacco control formed the foundation for the passage of these comprehensive ordinances. The ALA had key players associated with it at all levels of decision-making: the task force, the Environmental Commission, the County Board of Supervisors, and the City Council. Council member Lynn Robie, a nurse and former staff member of ALA, had prioritized the smoking ordinance as one of her most important goals, stating, "It really does save people's lives."⁶⁵ Commenting after the City Council vote about the lack of lobbying by the industry at the city level, Mayor Anne Rudin stated, "They probably gave up."⁶⁶

The Referendum

The tobacco industry had not given up.

On October 3, 1990, the same day that the County Board of Supervisors passed the ordinance, the Tobacco Institute loaned \$20,000 to a referendum campaign committee that had not yet formed. On October 5, 1990, three days after the county Board of Supervisors vote and prior to the City Council vote, Sacramentoans for Fair Business Policy (SFBP) filed a statement of organization to force a referendum on the smoking ordinances. Tim Pueyo, a San Francisco political consultant for RJ Reynolds, was hired to run the campaign for SFBP. That same day, RJ Reynolds contributed almost half of its total contribution of \$134,000. The other four major domestic cigarette manufacturers, American Brands, Philip Morris, Lorillard and Brown and Williamson had all contributed thousands of dollars by the end of October. As of December 31, 1990, SFBP received \$375,971 in cash, loans and services, only \$9,150 (2 percent) of which came from non-tobacco interests, mostly restaurants⁶⁷ (Table 2). The tobacco industry

Table 2. CONTRIBUTIONS TO SACRAMENTANS FOR FAIR BUSINESS PRACTICES AND CIGARETTE MARKET SHARES			
Company	Contribution ^a	Percentage of Total	Market Share of Company ^a
RJ Reynolds	\$134,434	36%	29%
Philip Morris	\$124,963	33%	42%
Brown and Williamson	\$36,327	10%	7%
American Brands	\$21,569	6%	7%
Lorillard	\$15,627	4%	8%
Liggett	\$0	0%	3%
Capital Cigar Co.	\$1,000	.2%	-
Tobacco Institute	\$32,901	9%	-
Non-tobacco sources	\$9,150	2%	-
TOTAL	\$375,971	100%	100%

contributions correlate highly with their domestic market shares ($r=.94$, $p=.005$).

While the tobacco industry has a long history of spending large sums to oppose nonsmokers' rights initiatives sponsored by tobacco control advocates,⁶⁹ the industry had only rarely attempted to overturn enacted ordinances by referendum. In 1983, the tobacco industry spent \$1.25 million in an unsuccessful attempt to overturn, by referendum, an ordinance enacted in San Francisco.⁷⁰ In 1984, it also lost an attempt to overturn a similar ordinance in Ft. Collins, Colorado. The referendum tactic then lay fallow for six years, until it reappeared in Sacramento. Before examining the situation in Sacramento, it is worth recalling the San Francisco experience.

In 1983 the San Francisco Board of Supervisors enacted a strong (at that time) workplace ordinance which the tobacco industry decided to fight by sponsoring a referendum. The Tobacco Institute, working through attorney/lobbyist Vigo Nielson, hired a campaign manager⁷¹ to organize the effort and filed a statement of organization for a campaign committee with the Secretary of State. The committee denied industry ties until forced to disclose the contributions by California's campaign finance laws. The tobacco industry hired a professional petitioning company from Los Angeles and paid circulators. In collecting signatures, it was reported that the paid circulators were misleadingly explaining that the petitions were merely to give the public a chance to vote on the issues, rather than repeal a law that had already been enacted. At least two of the paid circulators were not registered voters of San Francisco, as required by California State law.⁷²

The industry spent close to \$100,000 in San Francisco gathering the signatures and a total of \$1.25 million in the campaign, breaking their own expenditure record for a local ballot measure set in Miami four years earlier. Local contributions to the San Francisco referendum campaign amounted to \$3,300, less than 0.5 percent of the total. The tobacco company contributions were made in proportion to their market shares, indicating a well-coordinated campaign. The supporters of the ordinance, led by Americans for Nonsmokers Rights and the American Cancer Society, raised about \$133,000, mostly in small contributions. Despite the huge amount of money spent by the tobacco industry, the voters of San Francisco upheld the workplace smoking ordinance, the first major electoral defeat for the tobacco industry. This campaign illustrates that one need not spend as much as the tobacco industry does, so long as enough money and other resources are mobilized to mount a credible campaign.

In Sacramento, SFBP hired Nielsen, Merksamer, Hodgson, Parrinello and Mueller, a well-connected law firm in California, to fulfill legal obligations. The law firm represents the Tobacco Institute, five of the major tobacco companies (Lorillard, Philip Morris, Brown and Williamson, RJ Reynolds, and American Tobacco) the California Association of Tobacco and Candy Distributors Political Action Committee, and the California Medical Association.⁷² This firm has been paid more than \$1 million by tobacco interests for lobbying since 1985.⁷³ Vigo Nielson, of Nielson, Merksamer, has been a player for the tobacco industry in California for over a decade. On at least three previous attempts to create public smoking restrictions by initiative, Proposition 5 (1978), Proposition 10 (1980) and Bakersfield Measure A (1982), Nielson set up the campaign organizations to defeat the propositions for the tobacco industry.⁷⁴ He also represented the tobacco industry's unsuccessful referendum campaign committee in San Francisco (1983 Proposition P). Charles Bell, another attorney with the firm, was involved in the 1980 California campaign against Proposition 10.⁷⁵ Bell represents SFBP.

Within two weeks, SFBP was using the tobacco money to distribute referendum petitions through the mail. Despite being organized and funded by out-of-state tobacco companies, throughout the campaign SFBP posed as a local independent organization. A referendum petition with instructions was enclosed in the envelope. On November 1, 1990, Tim Pueyo, told the Sacramento Bee that his organization "is a grassroots coalition of business operators and individuals who oppose government sticking its nose in our business."⁷⁶ In an October 17, 1990 letter addressed to "Dear Neighbor," San Franciscan Tim Pueyo wrote, "We're an independent coalition of smokers, nonsmokers, small business owners, restaurant workers, restaurant owners and other concerned Sacramentans." The bottom of the letter, in fine print, stated: "Sacramentans for Fair Business Policy, sponsored by tobacco manufacturers, wholesalers and restaurants."

The County required 30,433 signatures and the city required 19,334 to force a referendum. Most of the tobacco money went to a Sacramento company specializing in petition drives.⁷⁷ The city clerk of Sacramento said that signature gatherers were being paid \$3 to \$5 per signature, when \$1 is usually considered a competitive rate.⁷⁸ Collecting enough signatures for the referendum drive may have been impossible if SFBP had relied solely on volunteer signature gatherers.⁷⁹ Pueyo justified the tobacco money and paid solicitors by saying, "We

only had 30 days to act... By the time we're finished with this, we will have the largest coalition of businesses and individuals that Sacramento has ever seen."⁶⁶ As in San Francisco in 1983, SFBP employed non-residents as signature gatherers from as far away as San Diego, Huntington Beach and Escondido.⁶⁷ According to Sacramento Mayor Anne Rudin, California state law requires petition solicitors for a city referendum to reside in the same jurisdiction. Rudin publicly questioned the legality of the out of town solicitors,⁶⁸ however, the District Attorney has not taken action.

During the signature collection process there were dozens of reports to the City Clerk, County Registrar of Voters and the American Lung Association of misleading statements made by signature gatherers.⁶⁹ Valerie Burrows, the City Clerk, registered 71 complaints during the course of the signature drive. Dian Kiser of the American Heart Association said that the signature gatherers that approached her were deceptive, asking questions such as, "Do you believe that there should be a choice or option regarding smoking?" Some signature gatherers did not mention that this was an effort to put an ordinance, already passed by the elected bodies, on the ballot.⁷⁰ Another Sacramento resident said that she was approached and asked to sign the petition if she was in support of the ordinance.⁷¹

By the deadline, the county had received approximately 60,000 signatures. Enough were deemed valid to force a referendum at the county level. Supervisor Streng said that they could have had many of the county petitions invalidated because the person who signed the bottom of the form most likely did not witness every signature as required, particularly in restaurants where the petitions were left at the hostess stand. He decided not to protest and let the voters decide.

Of the 31,135 signatures submitted to the city, not enough were valid to make the 19,334 minimum required to force a referendum vote. The city spent approximately \$50,000 checking every signature.⁷² Perhaps the biggest reason for the large number of invalid signatures at the city level was that county residents that lived outside of the city limits were asked to sign both petitions, instead of just the county petition. Only city residents were allowed to sign both petitions.⁷³

The county ordinance must now go before the voters in the next county-wide election, probably in 1992. The city's ordinance went into effect on December 14, 1990.

Implementation

From December 14, 1990 to March 31, 1991, 164 complaints concerning noncompliance were registered by the enforcement agency, the Environmental Health Division of the Environmental Management Department. When a complaint was received, a letter was sent with a copy of the ordinance. Ken Stewart, the enforcement officer, says that the ordinance is largely self-enforcing. No citations have had to be issued. According to Stewart, "Once people become aware of the law and realize that we are not out to arrest smokers, they comply."⁷⁴

Mayor Anne Rudin has found that city residents have been supportive of the ordinance.⁶⁶ Council member Lynn Robie agrees; 90 percent of the constituent correspondence she received was in support of the ordinance. She also stated that many employers are happy because they have been in favor of a smokefree workplace but have been unwilling to establish their own policy. Now if anyone complains, they can blame it on the city and county elected officials.⁶⁷

Supervisors Jim Streng and Grantland Johnson, Mayor Anne Rudin and City Councilmember Lynn Robie all expressed confidence that the voters will approve the county ordinance despite an expensive campaign that will be waged by the tobacco industry. Rob McCray of the Environmental Commission is confident that the referendum will fail because he saw virtually no opposition during the formulation process except from the restaurant association. He says that well-known community leaders will not stand up and say that the ordinance is bad. In addition, he explained, Sacramento has an enlightened public when it comes to political issues; the tobacco industry arguments will not be convincing to most people.⁶⁸

Sam Manolakas, president of the Sacramento Restaurant Association, said their strategy will be to portray the ordinance as unfair to business. He also said that SFBP may put up its own ordinance for the public to vote on, with a 50 percent nonsmoking area for restaurants and the old workplace policy requiring "reasonable accommodation" between smokers and nonsmokers.⁶⁹

Councilmember Robie and Supervisor Johnson expect a hard campaign in 1992 for the county ordinance. Johnson estimates that the tobacco company will spend close to a million dollars, which "can still buy a lot of television time in Sacramento."⁷⁰ Robie agrees, "There is no end to the tobacco money."⁷¹ Using San Francisco as an example,⁷² Sacramento could be facing a multi-million dollar campaign.

It will be difficult for the tobacco industry to argue the law is unpopular or unworkable since the city ordinance is working well. It is expected that a steering committee will be formed to spearhead the effort supporting the county ordinance. If the health agencies continue to exhibit the same commitment that got the ordinance passed in the first place, the referendum is likely to fail and the county ordinance will become law.

LODI

Lodi provides another example of tobacco control success despite tobacco industry involvement in a local community. The events in Lodi (population 50,000), in contrast to Los Angeles and Sacramento, illustrate how the tobacco industry attempts to arouse opposition to proposed smoking restrictions in small communities.

In December, 1989 a member of the San Joaquin County Smoking Action Coalition, a group of residents formed to promote smoking ordinances, and two staff members from the American Cancer Society (ACS) approached the Lodi City Council to request consideration of a smoking control ordinance. One of the ACS staff members, Sandy Stoddard, had grown up

in Lodi and knew three of the five council members personally, a fact that assisted the group's cause."

Lodi had never passed a law restricting smoking in public areas. According to Mayor Randy Snider, recent events at the national level brought greater attention to the issue of second hand smoke as a threat to public health. Congress had recently prohibited smoking on all domestic airlines and the EPA draft report" had recently been in the news.

During the spring of 1990, the City Council of Lodi formally considered a smoking ordinance. After prompting the ordinance a few months earlier, the community health activists took a back seat and the elected officials, particularly Mayor Snider, molded the proposal."

On May 16, 1990 the City Council voted 4 to 1 in favor of the ordinance prohibiting smoking in almost all indoor public places. Bars, motel and hotel rooms, retail tobacco stores, private offices, conference rooms and residences were excluded. Before the proposal became law, the Council had to vote on it again, within one month after the initial vote.

During the following three weeks, prior to the final vote, RJ Reynolds learned of the proposal. The tobacco company sent an "Action Alert" letter to residents of Lodi, urging them to call their Council members and attend the City Council meeting to voice opposition to the proposal. The names and telephone numbers of Council members were included in the letter, as well as a toll-free RJ Reynolds telephone number for anyone with questions. Additionally, the letter encouraged people to attend an "information meeting" on June 13 in nearby Stockton.

A similar meeting to the one in Stockton was held in Eureka, California on September 25, 1990, by RJ Reynolds consultant Tim Pueyo." Approximately 40 people showed up for the meeting. Pueyo encouraged the smokers to organize a "grassroots" group to meet once a month. He told the group to contact him if they hear about any smoking restrictions in the area, so that he can come in and help the group get organized to defeat the ordinance. Pueyo boasted a 75 percent success rate in defeating ordinances." Calling the nonsmoking activists "hypochondriacs," he stated, "The health question is extremely debatable." He suggested a catchy name for the group, TUFF, Taxpayers United for Fairness.

Meanwhile in June, 1990, about the same time the letter was sent by RJ Reynolds, a group called TUFF, Taxpayers United for Freedom, was formed in Lodi to oppose the ordinance. They claimed to be a grassroots organization which did not receive support from the tobacco industry. Adam Dados, a spokesperson for the group, said, "We've only received some ashtrays and lighters from the tobacco companies." During Tim Pueyo's presentation in Eureka, he told the group that RJ Reynolds could not give out free cigarettes because it would be considered paying the participants to come, but that it was legal to distribute ashtrays and lighters.

In contrast to the first City Council meeting, where little opposition was present, the second meeting, on June 6, 1990 was a raucous affair with 400 people attending, some hissing

and booing during testimony by those supporting the ordinance. Local medical doctors, the Berkeley-based Americans for Nonsmokers' Rights (ANR) and the local chapters of the American Heart Association and the American Cancer Society spoke in favor of the ordinance. Julia Carol of ANR stated after the meeting that she had been to many similar hearings, but "none so hostile."⁹ Those who spoke in opposition to the proposal were all local residents. Adam Dados of TUFF presented petitions with over 3,000 signatures to the council. Despite efforts by TUFF and RJ Reynolds to organize people opposed to the proposal, the ordinance passed again by 4 to 1.

"We're not going to let them get away with this," Dados warned.¹⁰ After the vote, Bill Stamos, a Lodi resident, armchair legal scholar and nonsmoker, drafted a referendum for the people of Lodi to vote on the issue.¹¹ The group had 30 days to gather 2369 signatures for the referendum. They turned in the referendum petitions with 5051 signatures. The Council had two choices: repeal the ordinance or put it on the ballot. They voted to let the people of Lodi decide.

Soon after the petitions were submitted by TUFF, a group of residents in support of the ordinance formed an organization called Lodi Indoor Clean Air Coalition (LICAC). This group, led by a medical doctor and a retired waitress, formed without the assistance of any established health organization. On July 10 they held a public meeting that was attended by approximately 175 local residents. The group raised \$2000 from individuals at the meeting and formed a list of people willing to volunteer in the campaign. Assuming that TUFF would fight a well-organized campaign, LICAC decided to hire a professional campaign coordinator to organize their effort.

During the initial weeks LICAC mobilized support and asked for contributions from concerned citizens through advertisements in the local newspaper. The campaign filing statements show that most of the larger contributions came from medical professionals. Of the \$6,250 in contributions of \$100 or more, \$3,200 came from individual doctors and medical companies, groups usually hesitant to become involved in local political campaigns.¹² LICAC raised a total of \$12,025 in monetary contributions; almost half of the contributions were less than \$100.¹³

Independent of LICAC, the local American Cancer Society sent out approximately 1,250 letters to patients and volunteers in Lodi urging them to support the referendum on the smoking ordinance.¹⁴ No effort was made on behalf of the other local voluntary health agencies (ALA or AHA) to mobilize support for the referendum through their extensive volunteer networks.¹⁵ Other potentially sympathetic groups, such as the California Medical Association, were asked to support LICAC, but did not contribute to the campaign.¹⁶

The campaign strategy of LICAC was to discredit the opposition, not by attacking the local group TUFF directly, but by indirectly labeling the group as a tobacco industry front.¹⁷ LICAC used newspaper advertisements borrowed from the health activists in Ft. Collins, Colorado, who had faced a similar campaign in 1984. These advertisements included one

portraying a cigar smoking tobacco industry representative stating, "So long Lodi, it's been good to know you," as he hopped into his limousine, briefcase full of money in hand.

One of the most effective advertisements was a letter to the editor from a local nonsmoker dying of cancer of the esophagus and stomach, urging support of the smoking restrictions. The ad, which ran the week before the election, was entitled, "Too Late for Me, Bob Shinn, age 59: Died -- October 24, 1990." The letter was reprinted at the request of the family. LICAC also distributed flyers at shopping malls and sent a mailer to 4100 high propensity voters which arrived the day before the election.

The advertisements by TUFF focused on smoking as an issue of rights and freedoms, embedded in the American Constitution. One ad, framed in the American flag, stated, "The smoking ban . . . is ANTI-AMERICAN and in violation of the very precepts of our inalienable rights as Americans." Another strategy, confusion about the health effects, was used. The advertisement read, "What evidence?" Countering one of the main reasons for the ordinance, the EPA draft report, the ad continued, "there is no . . . study on the effects of second-hand smoke available from the Environmental Protection Agency because no such study exists!"

TUFF also used the prediction of severe punishment for offenders of the ordinance, showing a cartoon of two prisoners in a jail cell, one stating, "I'm in here for murder, extortion and grand theft! What did you do?" The other replied, "I lit up a cigarette in Lodi!" Another tactic in fighting the nonsmokers' rights movement, labelling tobacco control as "social engineering", dates back to 1978, when a national polling firm hired by the Tobacco Institute suggested that they pose the question, "Where will it end?", regarding government intrusion.¹⁷ The TUFF advertisement asks, "What next?" Labelling the health interests as "a fanatical element in our society," the statement continues, "Their next target is the alcohol industry, ... pesticides, ... and eating meat ... milk and butter. Does this sound ridiculous? It has already begun! Put a stop to this insanity!"

TUFF collected more than \$11,439 in monetary contributions from local individuals, businesses and fund raising efforts. Of the contributions of \$100 or more, businesses donated \$2,575 and individuals \$2,150.¹⁸ The vast majority of donations were less than \$100; the source of these donations are not required to be documented, but presumably came from concerned local residents.

Responding to the charge that TUFF was a front for the cigarette companies, Dados said that Philip Morris had contacted him in the early weeks of the campaign to offer support, but nothing ever came of the offer. Had the tobacco industry offered monetary or in kind support, TUFF would have gladly accepted, Dados stated.¹⁹ Although it appears that the tobacco industry did not donate money directly to the campaign, the industry was involved in other ways:

- \$1,200 was loaned to TUFF from TBP Political Consulting in San Francisco, the firm of RJ Reynolds consultant Tim Pueyo.²⁰ When asked about the San Francisco

connection, TUFF spokesman Dados said the consultant was a friend.

- Rudy Cole of Los Angeles RSVP also appeared in Lodi in October, where he was the keynote speaker at a fund raiser for TUFF.
- RJ Reynolds hired a firm in Winston-Salem, North Carolina on August 29, 1990 to send a letter to residents of Lodi encouraging them to vote in opposition to the ordinance."

In November, despite the efforts of TUFF and the tobacco industry, the voters in Lodi approved the ordinance by an overwhelming 60 percent (1,986 to 1,470). After the election, Adam Dados complained that TUFF had to speak for restaurants, unlike their counterparts in Sacramento. If the restaurants had been more vocal and supportive, they may have been able to convince more voters to vote against the ordinance. TUFF received \$1,250 from local restaurants. Most did not take a stand. "They are wimps," he concluded."

Bill Stamos, the author of the referendum and Floy French Landau, TUFF spokesperson, both cited the campaign tactic by LICAC of labelling the TUFF group as a front for the tobacco industry as effective, yet false.¹⁰⁰ Additionally Landau stated that, had she the opportunity to do this campaign over again, she would pursue money from the tobacco industry. The money collected from the local people was not enough to get their message to the voters, she concluded.¹⁰¹

Although the tobacco companies were not a visible presence in Lodi, differing significantly from Los Angeles and Sacramento, they played a behind-the-scenes role, vis-a-vis the RJ Reynolds meeting in Stockton, Tim Pueyo's loan to TUFF, Rudy Cole's appearance at the fund raiser, and the RJ Reynolds mailings. Two weeks after the election, Adam Dados said he received a phone call from a representative of Philip Morris asking how they could help. He hung up on them.^{99,102}

METASTASIS

As shown in these case studies, the tobacco industry has clearly developed a strategy to oppose local tobacco control ordinances. Some trends have become familiar.

The industry can be expected to persist in making unsubstantiated claims about the business consequences of smoking ordinances. In January, 1991, after Rudy Cole departed,¹⁰³ the Beverly Hills Restaurant Association said that the 30 percent figure, used in tobacco and restaurant industry publications exaggerated the actual loss of business during the smoking ordinance.¹⁰⁴ The Levanthol and Horwath study commissioned by tobacco industry-sponsored RSVP, clearly refutes the claim that restaurants suffered a 30 percent drop in business during the ordinance. In fact, Rudy Cole himself stated in April 1991 that business had decreased, but not by 30 percent.¹⁰⁵ Yet the tobacco industry persists in promoting this deception. Most recently, the winter, 1991 edition of Philip Morris Magazine, stated, "Business in the city's restaurants dropped 30 percent."¹⁰⁶ No documentary evidence has ever been provided to

support the 30 percent claim.

As more cities in California propose smoking restrictions in public places, tobacco industry-sponsored RSVP or similar organizations will appear on the scene to fight the measure. Since successfully opposing the Los Angeles ordinance, Rudy Cole of RSVP has travelled to various other communities and the state legislature to testify on bills that would restrict smoking in restaurants.¹⁰⁷ According to an RSVP press release, RSVP has expanded into "a statewide organization formed to oppose restrictive prohibition on smoking in restaurants."¹⁰⁸ Cole does not disclose his ties to the tobacco industry¹⁰⁹ in testimony or in statements issued by RSVP. He simply claims to represent concerned restaurants. Los Angeles restaurants, Cole insists, pay for his travel expenses to communities throughout California such as Auburn, Walnut Creek, San Luis Obispo, Bellflower, Sacramento, and Lodi.

Meanwhile, a new group has formed with connections to RSVP. The California Business and Restaurant Alliance, based in Los Angeles, has been involved during April and May, 1991, in organizing opposition to proposed ordinances in Walnut Creek¹¹⁰ and Contra Costa County¹¹¹ in Northern California. The leader of the group, Fred Karger, formerly of RSVP,¹¹² contacted businesses, restaurants and government officials in these communities. Another individual representing the group, Peter Gambee, organized a press conference in Walnut Creek in May. They claim to be a "grassroots" organization, yet they share the same phone number as RSVP.¹¹⁰ Karger has repeatedly dodged question concerning tobacco industry contributions to the group.^{33,112}

Another person who continues to be active on behalf of the tobacco interests is Tim Pueyo. While travelling throughout the state to organize smokers' rights groups for RJ Reynolds, he has also led the referendum drive in Sacramento, made an interest free loan to the TUFF organization sponsoring the referendum effort in Lodi, and became involved most recently in Walnut Creek.¹¹³ When asked if he would attend the hearing, Pueyo said that he would not. "As soon as someone on the council asks if there are any representatives from the tobacco industry here, I'd have to stand up. I could see the headlines in the next day's paper, 'Big Tobacco Bucks in Walnut Creek.'"¹¹⁴

Besides the consistency observed in the individuals the industry is using to fight its battles at the local level, it is also important to note that the industry repeatedly hires a small number of well-connected firms to represent it. The involvement of Manatt Phelps law firm and Ogilvey and Mather public relations and advertising firm at both the national and local levels, as well as the involvement of attorneys associated with Vigo Nielson's firm in ballot measures and tobacco lobbying over the past 13 years, illustrates how the industry uses the same agents to represent its interests in different jurisdictions.

CONCLUSIONS

As the tobacco industry continues to successfully battle tobacco control legislation at the state¹¹⁵ and national levels,³ the local level has become increasingly important for both sides.

While national and state efforts by the tobacco industry continue to concentrate on campaign contributions and lobbying, which are and less effective at the local level, the industry has developed a nation-wide strategy to counter local tobacco control efforts. This strategy includes:

- Sending consultants to establish local smokers' rights groups throughout the nation;
- Encouraging local political action among smokers through mailings and expensive publications;
- Creating groups, in the form of business coalitions, funded by the industry and directed by individuals tied to the tobacco industry;
- In some cities, contributing money to election campaigns and hiring lobbyists to lobby against proposals;
- Keeping a low profile, and denying or minimizing tobacco industry involvement in local politics.

In addition to the tactics described in this paper, the tobacco industry attempts to use its strength in state legislatures to enact weak state legislation with a pre-emption clause that overturns or prevents passage of strong tobacco control legislation at the local level. Philip Morris also has an aggressive campaign underway to make smoking a civil right through state legislation outlawing employment discrimination based on smoking status.

Under varying community conditions, predictable tobacco industry responses are set into motion. If an ordinance is proposed in a local area where a smokers' rights or restaurant group does not already exist, the proposal may get beyond the initial stages without organized opposition, but as soon as the industry finds out about it through its extensive network of smokers' rights advocates, one can assume that the industry or its agents will play an active role in creating an opposition group. After all, according to Rudy Cole, "It should not be an enormous shock to anyone that the tobacco companies have an interest in legislation that prohibits the use of their products. Anyone who doesn't think so is naive."³⁶

In contrast to efforts by the tobacco industry, which are highly centralized and well-coordinated, the local nonsmokers' rights groups and chapters of national voluntary health agencies act independently. Consequently the degree of encouragement, cooperation and support for tobacco control legislation among these local chapters varies greatly.

An example of a national organization that continuously provides support and advice to communities considering a smoking ordinance is the public interest lobby group, Americans for Nonsmokers' Rights. ANR took an active role in all of the communities mentioned in this paper and assists dozens of local government bodies every year by testifying and providing model ordinances on issues ranging from smoking in restaurants to cigarette vending machine restrictions. Furthermore ANR mobilizes its members in the respective community to encourage

support for proposed nonsmokers' rights laws. The fact that small aggressive nonsmokers' rights groups such as ANR have been successful without the resources of the established health organizations suggests that the potential for meaningful tobacco control has hardly been tapped.

Two key ingredients are required to combat the local strategy of the tobacco industry: a strong coalition within the local community and sympathetic political leadership within the elected body. When these two ingredients combine, as in Sacramento and Lodi, they form a credible foe of the tobacco industry. In smaller communities, established health groups usually play a key role, but Lodi shows that enough support can be gathered from the community at large with a dedicated effort by nonsmokers' rights activists. However, in large cities, if the health groups are not mobilized at an early stage of the process, even the most committed elected official, such as Marvin Braude, will have difficulty hurdling the obstacles erected by the tobacco manufacturers. On the other hand, when the health community is committed to the cause from beginning to end, as illustrated in Sacramento, the tobacco lobby will have a difficult task keeping tobacco control measures from being enacted.

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Needless to say, the opinions expressed in this article are those of the authors alone and do not necessarily reflect the individuals and organizations who graciously assisted in this research.

REFERENCES AND NOTES

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7. Interview with Mark Pertschuk, Executive Director, Americans for Nonsmokers' Rights, Berkeley, California, April 3, 1991.
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9. Walker Merryman, Vice President of the Tobacco Institute, the industry's political arm, recognized that the strategy of grass-roots tobacco control was causing problems for the industry: "With some 95,000 local units of government, it's hard to keep track of them"
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12. Stanton A. Glantz and William W. Parmley, "Passive Smoking and Heart Disease: Epidemiology, Physiology and Biochemistry," Circulation, 1991; 83: 1-12.
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16. Walecia Konrad and Mark Lander, "Reynolds Draws a Bead on the Marlboro Man," Business Week, December 24, 1990, 48.
17. Roper Organization, Inc. "Public Attitudes Toward Cigarette Smoking and the Tobacco Industry," Prepared for the Tobacco Institute, May, 1978.
18. George Gallup, Jr., "Cancer Society Given Highest Ratings in Test of Special Interest Groups," Princeton, NJ: Gallup Poll Press Release, April 16, 1989
19. V. Lance Tarrance & Associates, Kern County Smoking Study, Confidential Report prepared for the Tobacco Institute, Houston, Texas, September, 1982.
20. Ron Saldana attended the Los Angeles City Council hearing on October 16, 1990 and appeared in Walnut Creek on April 2, 1991 for the City Council meeting discussing a tobacco control ordinance.
21. "The industry can't argue that smoking has any socially redeeming value so it has to position the issue as rights being infringed upon," explains Michael Graham, vice president of Targeted Communications Inc., which specializes in grass-roots organizing."
22. Alix Freedman, "Smokers' Rights Campaign Suffers from Lack of Dedicated Recruits," Wall Street Journal, April 11, 1988.
23. "If we talked about any of that, it could be used against us," explained Steven Weiss, spokesperson for Philip Morris.'
24. Walecia Konrad and Mark Landler, "Reynolds Draws a Bead on the Marlboro Man," Business Week, December 24, 1990, 48.
25. Laura Winer, "Puff Pieces: the World According to Philip Morris," Wall Street Journal, August 4, 1988, 18.
26. Stephen Bloom, "Bitter Fight over Vast Curbs on Smoking in Walnut Creek," Sacramento Bee, April 9, 1991, B1.
27. Janet Joson, "Smokers Fight Tobacco Industry's Battles," Daily Review, Hayward, California, March 17, 1991, 1.
28. George Jennings, WOAI News Radio, San Antonio, Texas, May, 1989.

28. Associated Press news wire, March 14, 1987.
29. Walker Merryman, the Tobacco Institute's Vice President, explained, "we did have some involvement in Beverly Hills prior to that final Council meeting. It's not like we've been sitting on the sidelines all of these years. The restaurant owners were not organized into any cohesive group."³⁰
30. Simon-Jaques Ifergan and Marina Milligan, "Tobacco Institute Acknowledges Role in Fight Against B.H. No-Smoke Law," Beverly Hills Courier, May 1987.
31. Roxane Arnold, "Judge Rejects Challenge to Beverly Hills Smoking Ban," Los Angeles Times, April 3, 1987.
32. Philip Hager, "High Court Declines to Review Smoking Ban in Beverly Hills," Los Angeles Times, May 21, 1987.
33. Jan Ferris, "Smoke Screen Clouds Tobacco Industry Action," Contra Costa Times, Walnut Creek, California, June 23, 1991.
34. Philip Morris, U.S.A., Philip Morris Magazine, Vol 6 (1), Winter 1991, 22; Philip Morris, Smoker, Vol 1 (6), July/August 1988; RJ Reynolds, Choice, Vol 1 (6), 1987.
35. Associated Press, July 22, 1987.
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37. Robert Reinhold, "In a Smoking Ban, Some See Ashes," New York Times, August 15, 1990.
38. "Benson and Hedges Goes to Burnett," Advertising Age, April 15, 1991, 1.
39. Canadian Council on Smoking and Health, Selected Compilation of Excerpts from Court Testimony and Exhibits from the Tobacco Industry Challenge to the Tobacco Control Act, Ottawa, Ontario, June 30, 1991, p. 29
40. Letter from Manatt, Phelps, Rothenberg and Phillips, Washington, D.C., representing Philip Morris, to the Environmental Protection Agency, July 25, 1990.
41. Levanthol and Horwath has since gone out of business.
42. Levanthol & Horwath, Preliminary Analysis of the Impact of the Proposed Los Angeles Ban on Smoking in Restaurants, October 1990.
43. The report³¹ states, "It is highly unlikely that a smoking ban in restaurants in Los Angeles would have the same degree of impact as was the case in the City of Beverly Hills. Beverly

Hills restaurants are concentrated in a small geographic area, and the options for people desiring to smoke in restaurants were very close by. However, if cities surrounded by and adjacent to Los Angeles did not enact a ban, some portion of sales would probably be lost. [emphasis added]

44. One of the leaders of the Beverly Hills Restaurant Association and owner of the Grill, Bob Spivak, commented in a recent interview that the Los Angeles ordinance would not have had the same degree of impact on business as the Beverly Hills ordinance, due to the way the ordinance was written. With the Beverly Hills experiment, many restaurants were excluded, including 18 restaurants in hotels and those with bar areas where food is served. Therefore only about 25 restaurants were required to be entirely smokefree and these businesses suffered, according to Spivak. The LA proposal included all restaurants in the city. If Los Angeles had passed the smoking ban, Spivak feels that other communities in the area "would have followed." Telephone interview with Bob Spivak, January 17, 1991

45. During November, 1990 and January, 1991, restaurants on the list provided by RSVP were surveyed by the author. Of the 440 restaurants listed, the survey covered every eleventh restaurant (n=41). Although RSVP has received money from the tobacco industry, RSVP claims to be financed primarily by its members. The survey showed that most restaurants had not contributed any money.

DONATIONS to RSVP

63% had not donated any money
13% contributed to RSVP
24% unknown

Furthermore, a significant percentage of restaurants were unaware or uncertain regarding the existence and purpose of RSVP. The table below shows the degree of awareness of restaurateurs about RSVP.

DEGREE OF AWARENESS ABOUT RSVP

59% joined, knowing the purpose of RSVP
15% did not join, but opposed to Braude proposal
10% may have joined, not sure, opposed to Braude proposal
7% not able to categorize (refused to answer questions)
5% joined, thinking it was a nonsmoking organization
5% did not join, supportive of Braude proposal
2% may have joined, not sure, supportive of Braude proposal

Twelve percent actually supported a smokefree restaurant ordinance. For example, the General

Manager of Charley Brown's, Rick Dove, said that the management of his restaurant was not opposed to a smoking ban. He received two letters and a phone call from RSVP. Even after explaining the restaurant's position on the proposed ordinance, RSVP listed the restaurant as a member.

46. In a phone interview with the author (10/15/90), Kantor denied being active in the battle against the Los Angeles ordinance. However, Kantor called Councilman Braude and Glenn Barr, his legislative assistant, in August to request a postponement of the issue on behalf of RSVP, to give the group more time to get organized. The request was denied.

47. Alma Fitch, Municipal Legislative Advocate Quarterly Expenses and Earnings Report, July - December, 1990, available at Los Angeles City Hall.

48. Interview with Glenn Barr, Assistant to Marvin Braude, October 15, 1990.

49. Philip Morris, Independent Major Donor Committee, California: Secretary of State, January 1 through December 31, 1990.

50. RJ Reynolds, Independent Expenditure and Major Donor Committee, filed with California Secretary of State, July 1 through December 31, 1989.

51. Phone interview with Ron Arias, October 30, 1990.

52. Interview with Dian Kiser, lobbyist for the American Heart Association, October 16, 1990.

53. David Ferrel, "Council Rejects Ban on Smoking in Restaurants," Los Angeles Times, October 17, 1990, A1.

54. Phone interview with Mark Pertschuk, October 19, 1990.

55. Mark Pertschuk, Executive Director of Americans for Nonsmokers Rights, estimated the tobacco industry spent \$500,000 in Los Angeles.*

56. Interviews with Mayor Anne Rudin (2/4/91), Chairman of the Environmental Commission, Rob McCray (2/4/91) and the President of the Chamber of Commerce, Roy Brewer (2/4/91).

57. Interview with Sam Manolakas, President of the Sacramento Restaurant Association, February 5, 1991.

58. Interview with Rob McCray, February 4, 1991.

59. Interview with Roy Brewer, President of the Chamber of Commerce, February 4, 1991.

60. Phone interview with Betty Turner, American Lung Association, April 16, 1991.

61. It is not known whether a tobacco company assisted in creating this organization. Attempts to contact the leader were unsuccessful.
62. Doug Dempster, "Bad News for Smokers in Capital," Sacramento Bee, September 12, 1990, A1.
63. Interview with Supervisor Streng, February 4, 1991.
64. Interview with Supervisor Johnson, February 4, 1991.
65. Interview with Councilmember Robie, February 5, 1991.
66. Interview with Mayor Rudin, February 4, 1991.
67. Sacramentans for Fair Business Policy, General Purpose Recipient Committee Post-filing Ballot Measure, Sacramento City and County Clerks, January 1 through December 31, 1990.
68. John C. Maxwell, "Cigarette Skids Continue," Advertising Age, December 4, 1989.
69. Miami (1979), California Propositions 5 (1978), 10 (1980), and 99 (1988), Bakersfield Measure A (1982).
70. Peter Hanauer, "Proposition P: Anatomy of a Nonsmokers' Rights Ordinance," New York State Journal of Medicine, July 1985, 369-374.
71. Nielsen hired Jim Foster as campaign manager because he was active in the City's large and politically active gay community. This served to underline the "freedom" and "lifestyle" themes that the tobacco industry uses. Foster was unaware of the fact that Nielsen had drafted an earlier state ballot initiative that was viewed as anti-homosexual. The smoking ordinance was upheld in the gay sections of San Francisco. Foster has since died of AIDS.
72. 1991-92 Directory of Lobbyists, Lobbying Firms, and Lobbyists Employers, Office of the Secretary of State (CA) Political Reform Division, April 1991, 195.
73. Michael Evans Begay and Stanton A. Glantz, "Political Expenditures by the Tobacco Industry in California State Politics," Monograph Series, University of California, San Francisco, Institute for Health Policy Studies, March 1991, 55.
74. Paul Loveday, letter to Federal Communication Commission, "Complaint against San Francisco Bay Area Licensees for violation of Section 317 of the Communications Act and 47 DFR 73.1212," October 25, 1983, 6.
75. Charles H. Bell, letter to Californians Against Regulatory Excess (the campaign opposing Proposition 10), October 2, 1980, regarding F.C.C. sponsorship identification rules, in Joint Appendix for Paul Loveday and Californians for Smoking and No Smoking Sections v. F.C.C., in the United States Court of Appeals for the District of Columbia, No 81-2061, March 31,

1982.

76. Robert Davilla, "Smoking Ban Put on Hold," Sacramento Bee, November 1, 1990.

77. PAYMENTS FOR SFBP:⁴⁷ AM Petition Consultants: \$210,520; Tim Pueyo: \$25,445; Steve Pueyo: \$1,924; Joanne Pueyo: \$1,819; Sonja McDonald (Escondido): \$3,993; Joel Wakham (San Diego): \$1,895; Ton Randall (Huntington Beach): \$1,044.

78. Phone interview with Valerie Burrows, City Clerk, February 20, 1991.

79. Billy Dee Johnson, president of a smokers' rights group in Indianapolis, explained the problem, "I have people say, 'If I want to smoke, I'll smoke come hell or high water,' but when it comes right down to it, they don't want to defend it."²²

80. Ken Chavez, "Rudin Thinks Foes of Smoking Ban Broke State Law," Sacramento Bee, December 1, 1990, B1.

81. Phone interview with Betty Turner, American Lung Association, January 15, 1991.

82. Interview with Dian Kiser, American Heart Association, February 5, 1991.

83. Jacquie Duerr, letter to the author, April 9, 1991.

84. Phone interview with Ken Stewart, Environmental Health Division, Environmental Management Department, Sacramento City and County, May 1, 1991.

85. Phone interview with Sandy Stoddard, American Cancer Society of San Joaquin County, April 10, 1991.

86. Interview with Mayor Randy Snider, November 2, 1990.

87. Notes were taken at this meeting by a person who forwarded them to Americans for Nonsmokers Rights in Berkeley, California.

88. This claim has not been substantiated.

89. Michael Drummond, "Council OKs Smoking Ban," Lodi News Sentinel, June 7, 1990.

90. Phone interview with Bill Stamos, November 14, 1990.

91. Phone interview with Betty Turner, Sacramento American Lung Association, December 5, 1990.

92. LICAC, Campaign Disclosure Statements, Lodi: City Clerk, July 1 - December 31, 1990.

93. Interviews with San Joaquin County ALA and AHA staff members, January, 1991.

94. Phone interview with Dr. Phil Ross, LICAC leader, November 14, 1990.
95. Interviews with Dr. Phil Ross and Eileen St. Yves, leaders of LICAC, November 2, 1990.
96. TUFF, Ballot Measure Committee Statements, Lodi: City Clerk, July 1 - December 31, 1990.
97. Interview with Adam Dados, TUFF Spokesperson, November 2, 1990.
98. RJ Reynolds, Independent Expenditure and Major Donor Committee Campaign Statement, Sacramento: California Registrar of Voters, July 1 - December 31, 1990, 1.
99. Phone interview with Adam Dados, November 21, 1991.
100. Phone interview with Bill Stamos, November 14, 1991.
101. Phone interview with Floy French Landau, November 14, 1991.
102. Dados has not given up. Even after pushing for a public vote on the issue, he refuses to recognize the law. He stated in a letter to the editor, "we as voters . . . cannot pass laws through a majority vote, that would take away the rights of others," and then encourages the health activists to "take a remedial course in reading and comprehension and then re-read the U.S. Constitution," letter to the Lodi News Sentinel, January 25, 1991. In another letter he labeled the health activists as "latter-day Hitlers" and cited unsubstantiated business consequences of the ordinance, such as, "one hundred restaurant employees have already been laid off." Adam Dados says that he will continue to smoke in restricted areas, "Any one I go to, I'm going to light up. I don't give a damn what the law is," in "New Smoking Law Draws Fire," by Betsy Clayton, Stockton Record, December 7, 1990.
103. As of January 1991, Cole was no longer associated with the BHRA, but the organization still exists.
104. Phone interviews with Bob Spivak, owner of the Grill in Beverly Hills and current leader of the Beverly Hills Restaurant Association, January 16 and 17, 1991.
105. Telephone interview with Jolinda Thompson of the California Restaurant Association, who had recently spoken with Rudy Cole about the 30 percent figure, April 19, 1991.
106. Philip Morris U.S.A., "The Lesson of Beverly Hills," Philip Morris Magazine, Winter 1991, Vol 6 (1), 22.
107. In January, 1991 Cole became active in San Luis Obispo politics, home of a stringent law which prohibits smoking in all indoor public places, including bars, where he organized a petition drive among restaurants to persuade the council to repeal the law. During March and April Cole appeared in Auburn and Walnut Creek to lobby city officials, testify at city council hearings and rally local restaurants to oppose the ordinance. Most recently, Cole has also been

active at the state level. In April 1991, he testified and frequently spoke with tobacco lobbyists and assembly members in Sacramento during committee hearings on tobacco legislation.

108. Restaurants for a Sensible Voluntary Policy, SLO Restaurateurs Join Forces to Oppose Smoking Ordinance; Petition City Council Seeking Reasonable Compromise, Los Angeles: Press Release, January 14, 1991.

109. Ron Saldana, lobbyist for the Tobacco Institute, sat with Rudy Cole of Restaurants for a Sensible Voluntary Policy throughout the Walnut Creek hearing and spoke with Cole numerous times during the Los Angeles City Council meeting. When asked how he knew Cole, Saldana said that they had first worked together in Beverly Hills. Source: interview with Ron Saldana, Walnut Creek, April 2, 1991.

110. John King, "Where There's Smoke, There's Out-of-town Fire," Contra Costa County Times, May 11, 1991, 5A.

111. Phone interview with Robin Hobart, Contra Costa County Health Services Department, May 24, 1991.

112. Repeated telephone requests for this information were not returned.

113. During the first two weeks of April, 1991 Tim Pueyo sent policy papers to Walnut Creek bar and restaurant owners that provided arguments against the proposal.

114. Stephen Bloom, "Bitter Fight over vast curbs on smoking in Walnut Creek," Sacramento Bee, April 19, p. B1.

115. J Mathews, "No-smoking Bills Fade in Legislature," Sacramento Bee, April 22, 1991.