



Drafting Effective Public Health Laws and Policies

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Tobacco Control Legal Consortium
and Public Health Law Center

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Billings, Montana



Public Health
Law Center

at WILLIAM MCDONELL COLLEGE OF LAW



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Healthy Eating

Active Living

Tobacco Control

Public Health Law Basics

Other Public Health Law

Announcement

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Welcome

Public Health Law Center Receives New Grant to Expand the Field of Public Health Law

The Public Health Law Center (former Tobacco Law Center) at the William Mitchell College of Law and the Robert Wood Johnson Foundation are working collaboratively to bolster the growing field of public health law. Robert Wood Johnson Foundation has awarded a grant to the Public Health Law Center, a leading legal resource on health improvement, to develop a network of experts and to provide legal technical assistance, analysis, coordination and training to public health professionals, lawyers and health advocacy organizations across the country.

The project will be led by Dan Stier, formerly with the Centers for Disease Control and Prevention's Public Health Law Program, where he served as liaison to the attorneys within state health departments, and former chief legal counsel to Wisconsin's health and social services department. Also leading the project is former Minnesota

NEWS

[Minnesota Expansive Product Labeling](#)

Minnesota Gov. signed into law Modernization of 2010, which definition of "to cover new smoke products, including in test markets legislation was, Tac Tobacco Act the products the regulate, such as orbs, resemble nicotine snads.

[Read more](#)

[All news stories](#)

EVENTS



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HEALTHY HEALTHCARE

Building Blocks for Success

A Guide For Developing Healthy Beverage Programs

There is no "one size fits all" approach to building a healthy beverage program. While the following are the typical components for effective programs, they can be tailored to fit the culture and goals of the organization. The other resources in this series are designed to support activities to implement these components. They also could be used to educate stakeholders about why and how healthy beverage programs are good for healthcare.



Convene a Healthy Beverage Workgroup

Beverage selections and procurement practices by healthcare facilities typically can involve administrative, legal, logistical and even emotional factors related to current beverage vendors and the selections they offer. This is why it is important

The Public Health Law Center has created a series of resources designed to inform and support efforts to promote healthy beverage choices within Minnesota workplace settings, with a special focus on healthcare. This guide describes the key components for successful healthy beverage programs.

Quick REFERENCE GUIDE



Convene a healthy beverage workgroup



Assess beverage availability and staff perspectives



Develop a healthy beverage policy and program



Engage senior management and key stakeholders



Educate staff, visitors, and stakeholders



Implement the policy



Track progress



Addressing and overcoming challenges



Celebrate success

The Network for Public Health Law

- Practical legal assistance on a variety of public health topics
- Resources from webinars and trainings to fact sheets and legal briefs
- Connect with a community of experts and users of public health law



TRIBAL PUBLIC HEALTH LAW Tribal Public Health Law Resource Table

The Tribal Public Health Law Resource Table lists organizations with experience in tribal and public health law. The organizations are classified as epidemiology centers, academic, non-profit and public or legal services. The table also provides contact information and highlights each organization's relevant focus area.*

I. Epidemiology Centers

Tribal Epidemiological Centers ¹ (Federal Indian Health Service)	Twelve Centers, National Contact info for individual Centers: www.ihp.gov/epi/index.cfm?module=epi_res_table	Practice Area: Broad policy based disease prevention and control. Example: Development of immunization program to track state and IHS immunization registry overlap (www.ihp.gov/epi/index.cfm?module=epi_vaccine_projects).
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* Because of the fluid nature of the organizations listed, the table is no doubt incomplete and users are encouraged to submit suggestions to ensure the most comprehensive resource possible.

Support is available at no cost!
Visit www.networkforphl.org
for more information.

[https://www.networkforphl.org/_asset/
hd1j6p/Tribal-Public-Health-
TableFINAL.pdf](https://www.networkforphl.org/_asset/hd1j6p/Tribal-Public-Health-TableFINAL.pdf)

The Tobacco Control Legal Consortium

The legal network for
commercial tobacco
control policy.

Who We Serve:

- City and county attorneys
- Private attorneys and individual citizens
- Public health advocacy organizations and community coalitions
- Public health officials
- Researchers
- Tribal officials and other elected officials

What We Do:



- Education (presentations; webinars; fact sheets, etc.)
- Legal research
- Policy development
- Sounding board
- Litigation support
- www.TCLCOnline.org



What is an Effective Law or Policy?

- **Easy to understand and follow**
- **Easy to enforce**
- **Accomplishes goals**



Why laws and written policies?

- ✓ Promotes compliance
- ✓ Promotes equitable treatment
- ✓ Aids enforcement
- ✓ Creates sustained change



The Policy Journey

- Gather local data
- Engage stakeholders
- Review samples of laws
- Involve legal assistance
- Identify deal breakers
- Anticipate challenges



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Know the Stakeholders

Potential Proponents

- Governmental Staff / Departments
- In-House Lawyer / Tribal Attorney
- Enforcement Agencies
- Advocates / Coalitions / Health Professionals, incl. IHS
- Elders / Spiritual Leaders / Traditional Tobacco Experts

Potential Opponents

- Bar / Restaurant Owners
- Gaming Industry
- Commercial Tobacco Industry

Be Prepared to Counter Typical Arguments:
Ventilation, Lost Profits, etc.

Essential Elements of a Law or Policy

- Findings
- Purpose
- Definitions
- Restrictions/Requirements
- Exemptions
- Implementation
- Enforcement



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Essential Elements: Findings

“The Cheyenne River Sioux Tribe finds that smoking prevalence, and therefore the incidence of ETS, is disproportionately higher amongst Northern Plains Indians at 33.4% of the adult population, as compared to a U.S. national average of 20.9%, putting American Indian non-smokers and children at great risk for the health consequences caused by ETS exposure.”



Essential Elements: Findings

WHEREAS, in the Muscogee (Creek) Nation's WIC Program's review of recent research on obesity in youth, it shows that: 1) more than 30 percent of Native American 4-year olds are obese; 2) more than 39 percent of low-income Native American children ages 2-5 are overweight or obese; 3) over a 10-year period, the number of diabetes cases increased by 68 percent among Native American teens ages 15-19; 4) childhood obesity is associated with an increased risk of type 2 diabetes, high blood pressure, cardiovascular disease, asthma, sleep apnea and social discrimination; 5) obese Native American children are twice as likely to die before the age of 55; and 6) there is a direct correlation between the lack of affordable, healthy food and the lack of exercise contributing to obesity; and



Essential Elements: Definitions

“Commercial tobacco” means all forms of commercial tobacco use including but not limited to cigarettes, cigars, or any other commercial tobacco products.

“Traditional tobacco use” as defined by the CRST Cultural Preservation Office means plants for healing the mind, body, and spirit. There are four plants that are used in Lakota ceremonies: tobacco, sage, sweet grass and cedar. Traditional tobacco is called “cansasa,” another name is “kinikinik.” Cansasa translates to red willow. Tobacco is used: 1) in our sacred pipe in ceremonies and is not inhaled; 2) in its natural form to make tobacco ties for prayer or thanksgiving in times of need; 3) only for special purposes in prayer, offering or rituals; 4) as an offering to an elderly when we need his or her help, advice or prayer; 5) when we see the sacred eagle in the sky, as the eagle is the intercessor to Tunkasila, Great Spirit; 6) to the drum at pow-wows to give special blessing to the heartbeat of the nation and onto the singers at the drum; 7) when a person asks someone to do a ceremony such as naming – hunka-pipe ceremony, singing-sweat lodge or any of the Lakota ceremonies; 8) to a person as a way to ask for forgiveness to heal bad feeling when emotions are hurt; 9) or to an elderly to seek knowledge and to show appreciation to that person for sharing. Traditional tobacco is never abused because it is in its natural form without additives.”

Cheyenne River Sioux Tribe [CRST] draft ordinance, Sec. 3(A)-(B)



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Drafting Effective Public Health Laws

- ✓ Be clear
- ✓ Strive for conciseness
- ✓ Be consistent
- ✓ Be practical



Clear & Concise



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

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

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

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

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

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

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

A lawyer can help!



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Drafting Effective Public Health Laws and Policies

Common Drafting Mistakes

- ✓ Drafting by “Xerox”
- ✓ Drafting in isolation
- ✓ Overusing exemptions



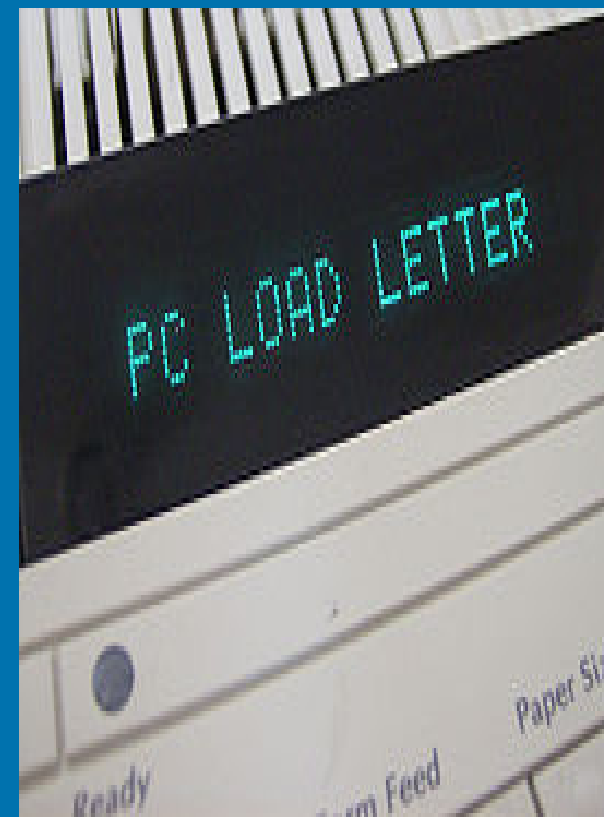
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Don't Draft by "Xerox"

- Use cut & paste carefully
- What's been done somewhere else may not be a good fit
- Particularly true with tribal tobacco laws and policies
 - Commercial vs. traditional tobacco
 - Exemptions for ceremonial use



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Don't Draft in Isolation

- You are not alone

- Legal assistance
- Other advocates
- Stakeholders



- Your policy is not an island

- Existing laws and policies
- Trends across the U.S., tribes, global



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Drafting Effective Smoke-Free Laws

- Questions & Answers
- Contact us directly

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