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Smoking Ban in Bars

Background Information

In recent years there has been an increased amount of attention paid to Environmental Tobacco Smoke (ETS). More commonly known as second hand smoke, ETS has been actively studied and its effects are better known today than ever before. There have been several campaigns in recent years that have spearheaded the fight against ETS. The main argument against allowing people to smoke in public establishments is the detrimental effects that ETS has on workers. Although OSHA regulates air quality standards for employees, there have been no regulations put in place by the Federal government to date that refer to ETS exposure. States and cities are now taking it upon themselves to protect workers and create a cleaner atmosphere in the smokiest public places, most notably bars and cabarets. According to the Environmental Protection Agency, Cigarette smoking kills approximately 434,000 people every year in the United States.¹ The EPA estimates that roughly 62,000 of those are non-smokers who die from exposure to ETS.

Health Issues

Due to the fact that ETS is a known human carcinogen it has become an important issue for several federal agencies who deal with the regulation of occupational and environmental risks. The Environmental Protection Agency's Environmental Advisory Board has ranked indoor air pollution as one of the top five environmental risks to public health.² Recent studies completed by The University of California/Berkley concluded that levels of ETS in bars were 3.9 to 6.1 times higher than in offices and 4.4 to 4.5 times higher than in residences. The risk of lung cancer may be increased by as much as 50 percent for employees of these industries.³ Researchers conducted another study based on a random sample of San Francisco bars and taverns, and published their findings in *The Journal of the American Medical Association*. The authors of this study found that thirty-nine bartenders (74% of the total sample) initially reported respiratory symptoms prior to the instatement of the ban. Of those symptomatic at the inception of the ban, 23 (59%) no longer

¹ EPA "Fact sheet: respiratory health effects of passive smoking"
<http://www.epa.gov/iaq/pubs/etsfs.html#Summary> visited on 1/26/2004

² EPA "Fact sheet: respiratory health effects of passive smoking"
<http://www.epa.gov/iaq/pubs/etsfs.html#Summary> visited on 1/26/2004

³JAMA "Involuntary smoking in the restaurant workplace. A review of employee exposure and health effects" <http://jama.ama-assn.org/cgi/search?fulltext=smoking+employees> visited on 1/26/2004

had symptoms at follow-up of the study. The researchers concluded that “establishment of smoke-free bars and taverns was associated with a rapid improvement of respiratory health.”⁴

Extra ventilation is not seen as a plausible alternative according to the Environmental Protection Agency as well as The National Institute of Occupational Safety and health (NIOSH). This is due in part, to an assessment by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers that concluded that ventilation would be ineffective in combating the adverse affects of ETS. Both the EPA and NIOSH then noted that the only way ventilation could be used as a viable option for air treatment is if separate ventilation systems were installed for both smoking and non-smoking sections and the air was directly vented to the outside, and under no circumstances re-circulated.⁵

In conformance with a Current Intelligence Report, released in 1991 by the CDC, “NIOSH recommends that ETS be regarded as a potential occupational carcinogen in conformance with the OSHA carcinogen policy, and that exposures to ETS be reduced to the lowest feasible concentration. Employers should minimize occupational exposure to ETS by using all available preventive measures.”⁶

Ordinances/Legislation

New York is probably the most noteworthy city that has taken the prerogative to ban smoking. Effective July, 24th 2003, New York State Amended it’s Clean Indoor Air Act (Public Health Law, Article 13-E) to prohibit smoking in virtually all workplaces, including restaurants and bars. New York enforces its regulations with penalties of up to \$2,000.⁷ Although this is relatively recent legislation, there is a lot of support for the move from the medical community and much opposition from the proprietors of the establishments that the regulation has affected. Another state that has taken the initiative to ban smoking in their bars is California. In 1994 California banned smoking in almost all indoor workplaces, and in 1998 the California State Assembly passed a provision to the state labor code that banned smoking in all bars, this law went into effect on January 01, 1998.⁸

In an article in the *American Journal of Public Health* a series of random sample computer assisted telephone surveys were conducted by Field Research Corporation for the California Department of Health and Services. Overall the series of surveys concluded that California bar patrons increasingly support and comply with the smoke-free bar law.⁹ About 1000 people were surveyed at three different intervals, three months, six months, and two and a half years after the law was enacted on January 1, 1998. Overall approval of the ban rose 13.4% and self-reported noncompliance with the law decreased 10.6%. Figure 1 shows an increase of the likelihood of bar patronage since the passage of the law among both smokers and non-smokers. Figure 2

⁴ JAMA “Bartenders' Respiratory Health After Establishment of Smoke-Free Bars and Taverns”
<http://jama.ama-assn.org/cgi/search?fulltext=smoking+employees> visited on 1/28/2004

⁵ Oregon DHS “Fact sheets for public and policymaker information”
<http://www.dhs.state.or.us/publichealth/tobacco/policy/argument.cfm> visited on 1/26/2004

⁶ CDC (NIOSH) “Environmental Tobacco Smoke in the Workplace, Lung Cancer and Other Health Effects” http://www.cdc.gov/niosh/91108_54.html visited on 1/26/2004

⁷ New York DOH “A Guide for Restaurants and Bars to New York State's Clean Indoor Air Act”
http://www.health.state.ny.us/nysdoh/clean_indoor_air_act/restaurants_and_bars.htm visited on 1/26/2004

⁸ Medscape “Changes of Attitudes and Patronage Behaviors in Response to a Smoke-Free Bar Law”
<http://www.medscape.com/viewarticle/461365> visited on 1/28/2004

⁹ Medscape “Changes of Attitudes and Patronage Behaviors in Response to a Smoke-Free Bar Law”
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illustrates increased approval of the law by both smokers and non-smokers over time. The approval rate among smokers surveyed rose 19.2% since March 1998.

New York offers a waiver to businesses that can prove undue financial hardships due to the Clean Indoor Air Act or if other factors exist which would render compliance unreasonable. Also, every waiver granted shall be subject to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to an involuntary exposure to second-hand.¹⁰

Economic Issues

Restaurant and bar owners who oppose the proposed smoking ban fear a ban will cause a drastic decline in patron business based on the idea that many regular customers will find a new establishment in an adjacent town or county not subject to smoke-free legislation. Numerous surveys have been taken in areas that have already imposed a smoking ban, but many have not been conclusive enough to prove that a smoking ban will in fact cause a decline in business for those restaurants and bars that allow smoking indoors. These surveys include studies done by *The Journal of Public Health*, conducted in cities throughout California and Colorado¹¹, the New York State Health Department and the Texas Department of Health.¹² Most factual evidence supports a non-change in business revenues, and in some cases an increase.

A statewide ban would, overall, be more effective than regional, city or county based bans because smoking alternatives are further limited, thus

Figure 1: Likelihood of bar patronage after ordinance

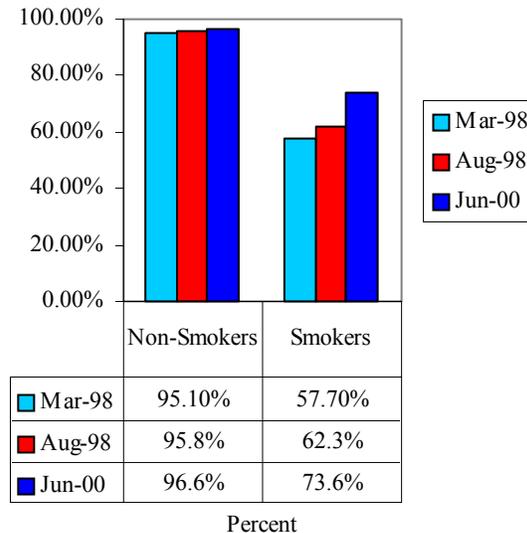
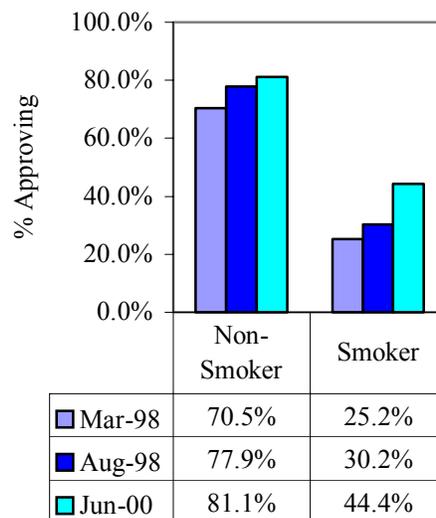


Figure 2: Approval of the Law



¹⁰ New York Department of Health “Regulation of smoking in public and work places” http://www.health.state.ny.us/nysdoh/clean_indoor_airact/ciaalaw.htm visited on 1/26/2004

¹¹ Glantz, Stanton A. and Lisa R.A. Smith. “The Effect of Ordinances Requiring Smoke-Free Restaurants and Bars on Revenues: A Follow-Up.” *American Journal of Public Health*, October 1997, Vol.87, No.10, p1687.

¹² Texas Department of Health “One Year Assessment of the Impact on a Smoking Ban on Restaurant and Bar Revenues in El Paso” Texas, <http://www.tdh.state.tx.us/bdip/Revenue03.pdf> visited on 1/26/2004

affecting businesses equally. Statewide bans affect all businesses equally, potentially alleviating any concerns about outside competition. A statewide ban would mean an annulment of the Cabaret License, which has been the sole reason bars and restaurants have been able to continue to allow smoking, excusing them from 1993 Clean Indoor Air Law (Public Health Law, Article 13-E).

Many cities throughout the US have already enacted smoking ordinances throughout the 1990's, providing the means for a formative analysis of the effects of smoke-free ordinances compared to similar cities without such ordinances. *The American Journal of Public Health* conducted a study in 1994 and again in 1997, which analyzed data on taxable restaurant sales and total retail sales from the first 15 US Cities to enact smoke-free legislation compared to similar cities without smoke-free ordinances. Cities were matched by population, household income, smoking prevalence, and geographic location through data obtained from the California State Board of Equalization and the Colorado State Department of Revenue.¹³ Two sets of analysis were conducted, the first a ratio between restaurant sales and total retail sales of the area and the second, a comparison between restaurant sales in the cities with an ordinance and restaurant sales in similar cities without an ordinance.¹⁴ "Smoke-free ordinances generally had no statistically significant effect, either on the fraction of total retail sales that went to restaurants or on the ratio between sales in smoke-free cities and sales in comparison cities."¹⁵ The purpose of this study was to address the general claim that smoke-free ordinances substantially decrease revenues by approximately 30%, however the data did not support this claim. Due to a very low change in the magnitude of the effect of the ordinance, this study shows that if anything, smoking ordinances will not cause any adverse economic consequences.

Prepared by: Jared Bombaci, Dave Vega, Stephanie Nemore under the supervision of Professor Anthony Gierzynski in response to a request from Representative J. Donovan, February 11, 2004

¹³Glantz, Stanton A. and Lisa R.A. Smith. "The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales." *American Journal of Public Health*, July 1994, Vol.84, No.7, p1081.

¹⁴Glantz, Stanton A. and Lisa R.A. Smith. "The Effect of Ordinances Requiring Smoke-Free Restaurants and Bars on Revenues: A Follow-Up." *American Journal of Public Health*, October 1997, Vol. 87, No. 10, p1690.

¹⁵Glantz, Stanton A. and Lisa R.A. Smith. "The Effect of Ordinances Requiring Smoke-Free Restaurants and Bars on Revenues: A Follow-Up." *American Journal of Public Health*, October 1997, Vol.87, No.10, p1689.