

The Duluth Clean Indoor Air Ordinance: Problems and Success in Fighting the Tobacco Industry at the Local Level in the 21st Century

Case study methodology was used to investigate the tobacco industry's strategies to fight local tobacco control efforts in Duluth, Minn.

The industry opposed the clean indoor air ordinance indirectly through allies and front groups and directly in a referendum. Health groups failed to win a strong ordinance because they framed it as a youth issue rather than a workplace issue and failed to engage the industry's economic claims. Opponents' overexploitation of weaknesses in the ordinance allowed health advocates to construct a stronger version.

Health advocates should assume that the tobacco industry will oppose all local tobacco control measures indirectly, directly, or both. Clean indoor air ordinances should be framed as workplace safety issues. (*Am J Public Health*. 2003;93:1214–1221)

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DURING THE 1990S, THE

primary focus of tobacco control policymaking shifted from clean indoor air to issues surrounding youth smoking. In those areas that did focus on instituting measures involving clean indoor air, the tobacco industry used a recurrent set of strategies—front groups to promote smokers' rights or oppose government intrusion, economic arguments, litigation, and referendum campaigns—to oppose these measures^{1–5} while attempting to remain invisible in the public debate. Since 2000, the clean indoor air movement has reemerged around the United States and internationally, and the industry has responded with updated versions of their earlier strategies. The tobacco industry is highly motivated to oppose smoke-free workplaces because they lead to a 29% reduction in cigarette consumption rates.⁶ The battle over a local ordinance in Duluth, Minn, from 1999 to 2001 illustrates how the tobacco industry opposes local clean indoor air ordinances in the 21st century.

Duluth is a harbor community of 87 000 residents located in northeastern Minnesota, on Lake Superior.⁷ Its accommodation and food service sector generates a payroll of about \$73 million per year and employs about 9000 people. Duluth was the second city in Minnesota to pass a clean indoor air ordinance; the first was the small town of Moose

Lake, which had only 9 restaurants. In Duluth, the tobacco industry mobilized restaurant and bar owners to oppose the ordinance, encouraged the use of ventilation systems, predicted economic chaos, used task forces to delay enactment of the ordinance, and organized defiance of the law once it passed.

Originally, Duluth health groups accepted a weak ordinance that involved severe implementation problems. In May 2001, public health advocates were able to capitalize on the tobacco industry's overreaching in trying to further undermine the weak ordinance and helped pass a stronger ordinance. Understanding the dynamics of the Duluth ordinance will help tobacco control advocates in other cities anticipate the tobacco industry's strategies and avoid the mistakes that advocates initially made in Duluth.

USING CASE STUDY METHODOLOGY TO INVESTIGATE INDUSTRY TACTICS

Print and Internet news media accounts were gathered from the files of the American Lung Association and the Twin Ports Youth and Tobacco Coalition of Duluth and from a daily survey of the Internet sites of 2 Duluth newspapers (the *News Tribune* and *Budgeteer News*) between February 2000 and June 2002. Tele-

phone interviews were used in collecting data from stakeholders in public health advocacy organizations and individuals active in promoting the ordinance.

We used data from official documents and videos of city council meetings to obtain the views of the opposition. We also examined previously secret tobacco industry documents from June 2000 to June 2002 (accessed through <http://www.tobaccoarchive.com> and <http://legacy.library.ucsf.edu>), using the search terms "Duluth," "Minnesota Licensed Beverage Association," "Tobacco Institute budget," and the names of key players (Table 1). Data on campaign contributions were obtained from campaign financial reports published by the Duluth City Clerk's Office.

THE FIRST ORDINANCE

The Twin Ports Youth and Tobacco Coalition was founded in 1994 to pursue a variety of local tobacco control initiatives in Duluth. Members included the American Lung Association, the American Cancer Society, the American Heart Association, hospital and medical groups, Duluth public schools, and other groups. The Coalition hoped to avoid controversy by working with local restaurants to develop the ordinance, beginning in November 1999. Concurrently, the Coalition began to educate Duluth City Council members about

TABLE 1—Stakeholders in the Duluth Clean Indoor Air Ordinance Fight

Stakeholder	Identification/Role
American Lung Association of Minnesota	Funded the “Vote Yes! Yes! Yes! for Healthy Air Committee” in support of the ordinance
Brown & Williamson Tobacco Co	Funded People's Voice Committee to repeal the ordinance
City of Duluth Sales Tax Department	Collected restaurant sales tax data that refuted the opposition's claims of economic chaos resulting from enactment of clean indoor air ordinance
Duluth City Council	Policymaking body; considered, debated, and passed the ordinance
Duluth Hospitality Association	Group created to fight against the ordinance
FORCES (Fight Ordinances and Restrictions to Control and Eliminate Smoking)	Internet-based “smokers' rights” group; campaigned against the ordinance
Gary Doty	Mayor of Duluth; ultimately supported the passage of a revised and much stronger ordinance
Honeywell Inc	Promoted ventilation system as a solution to secondhand smoke exposure
Kay Biga	Lawyer, restaurateur, and Mayor Doty's election campaign committee co-chair; opposed ordinance and promoted ventilation solution to secondhand smoke exposure
Lorillard Tobacco Co	Funded People's Voice Committee to repeal the ordinance
Minnesota Licensed Beverage Association	Tobacco industry ally opposing local clean indoor air ordinances in Minnesota
Minnesota Partnership for Action Against Tobacco	Funded the “Vote Yes! Yes! Yes! for Healthy Air Committee” in support of the ordinance
Minnesota Accommodation Coalition	Tobacco industry ally headed by Thomas A. Briant; received \$200 000 from the tobacco industry between 2000 and 2001 to defeat tobacco control measures in Minnesota
National Smokers Alliance	Tobacco industry ally created by Philip Morris; set up the “freedom fax” and business rights signature campaigns in opposition to the ordinance
People's Voice Committee	Created by the Duluth Hospitality Association to initiate and influence the outcome of the repeal campaign against the ordinance; received funds from the tobacco industry
Philip Morris	Tobacco company that funded a telephone bank to influence the outcome of the repeal vote in opposition to the ordinance
Pickwick Restaurant	Owner defied provisions of the first ordinance and opposed the ordinance throughout
R. J. Reynolds Tobacco Co	Funded People's Voice Committee to repeal the ordinance
Sammy's Pizza	Owner defied provisions of first ordinance
Thomas A. Briant	Tobacco industry contract lobbyist in Minnesota and industry's pointman opposing local ordinances; directs the Minnesota Accommodation Coalition
Twin Ports Youth and Tobacco Coalition	Coalition founded in 1994 to pursue a wide variety of tobacco control initiatives in Duluth; members include voluntary health agencies, schools, hospitals and medical groups, and others; funded the “Vote Yes! Yes! Yes! for Healthy Air Committee” in support of the ordinance
Vicky Haugland	Duluth Hospitality Association and People's Voice Committee leader opposing the ordinance

the health dangers of second-hand smoke exposure. They framed the ordinance as a children's health issue. Initially, restaurant owners were receptive to the idea.

The Tobacco Industry's Response

By February 2000, the tobacco industry had recruited third-party groups to organize opposition against the ordinance. As in earlier debates over local ordinances,^{4,8} the tobacco indus-

try used the National Smokers Alliance (an organization created by the Burson-Marsteller public relations firm on the part of Philip Morris) to lobby against the ordinance.⁸

The industry also recruited the Minnesota Licensed Beverage Association,⁹ an organization to which it had contributed \$9000 between 1993 and 1997,^{10–12} to engage in anti-ordinance lobbying. On February 2, 2000, Philip Morris's regional director, Paul J. Lucas, con-

tributed \$10 000 to the beverage association on behalf of the company.¹³ The association's lobbyist claimed that the contribution of Philip Morris was not intended to be used in lobbying but was made in payment of “annual dues for Miller Brewing Co., which Philip Morris owns.”¹⁴ However, according to the quarterly report of lobbying expenditures filed with the Minnesota attorney general (<http://www.smokefreecoalition.org/truth/disclosure>),⁹ \$2500 of the

\$10 000 was earmarked for lobbying.

The ordinance, introduced in a Duluth City Council meeting on April 10, 2000, stipulated that restaurants, pool halls, and bowling alleys were to be smoke free; bars were excluded. During an April 25, 2000, televised “town meeting” in which the ordinance was debated, proponents continued to frame the ordinance as a children's health issue, while opponents framed it as an economic issue.¹⁵

In addition to the Minnesota Licensed Beverage Association, the newly formed Duluth Hospitality Association opposed the ordinance by reiterating tobacco industry claims of serious economic losses,¹⁶ proposed ventilation solutions to the problem of second-hand smoke, endorsed the creation of a task force that could become involved in watering down or delaying the ordinance, and sponsored a signature petition drive urging that business owners be allowed to decide how to accommodate their smoking and nonsmoking patrons. The Duluth Hospitality Association first emerged in early spring 2000, at about the same time as Coalition members established the financial link between the beverage association and Philip Morris. The Coalition met for the first time with the Duluth Hospitality Association in spring 2001, a few weeks before the city council's final meeting on the ordinance amendments (author interview with S. O'Neil, June 7, 2001).

Claims that ventilation (as opposed to smoke-free restaurants) was the proper solution to secondhand smoke exposure were premised on tobacco industry-sponsored studies conducted by Oak Ridge National Laboratories (author interview with S. O'Neil,

August 3, 2001).¹⁷ Tobacco control advocates countered by asking Honeywell, the manufacturer of the “air curtain” ventilation system being promoted by industry allies, whether filtering would eliminate all of the health hazards known to occur with exposure to environmental tobacco smoke.¹⁸ The company’s reply was that “Honeywell has no data to support health hazard claims.”¹⁸

In May 2000, Philip Morris set up a telephone bank urging Duluth residents to call the city council and oppose the ordinance. Philip Morris’ link to this effort was not known until a Duluth television reporter confirmed that Philip Morris had set up the phone bank (author interview with P. McKone, June 14, 2000).

The Duluth Hospitality Association mounted a petition campaign in late spring 2000 urging members of the city council to allow businesses to make their own decisions about accommodating smoking.¹⁹ Following standard tobacco industry “accommodation” rhetoric,²⁰ the petition read as follows: “We, the undersigned, patrons and supporters of our local Duluth businesses strongly urge you, the Duluth City Council, to reject the smoking prohibition ordinance and to continue to allow businesses, with our input, to make accommodation decisions without government interference for all patrons of the Duluth hospitality industry.” The association also endorsed a task force proposal announced by Duluth Mayor Gary Doty on May 1, 2000.

At about the same time, in June 2000, the tobacco industry’s National Smokers Alliance^{21–23} used 2 signature campaigns to organize local smokers against the ordinance. The first was an economic “freedom fax” asking city

council members to protect small hospitality business owners (“Protect the mom-and-pop business community that would be most affected by a smoking ban”). The second was a business rights signature campaign that urged Duluth residents to “support the ability of the marketplace to dictate these policies, and the rights of business owners to serve all of their customers the way they see fit!” The signed petitions were delivered to the Duluth City Council.

Health Advocates’ Response

Health advocates, through the Coalition, pursued an ambiguous strategy to promote the ordinance. Although they exposed the link between the Minnesota Licensed Beverage Association and Philip Morris, recruited medical specialists to provide expert testimony on the health effects of secondhand smoke and ventilation, and mobilized witnesses to testify against creating the proposed task force, the Coalition failed to challenge the tobacco industry’s claims that the ordinance would adversely affect hospitality industry revenues. It also failed to frame exposure to secondhand smoke as a workplace safety and health issue.

In February 2000, the Coalition reported the link between the Minnesota Licensed Beverage Association and Philip Morris to the Duluth *News Tribune* and to the Duluth City Council. Later, in spring 2000, the Coalition reported that Philip Morris had sent representatives to an April 25, 2000, “town meeting” held to discuss the smoking ban controversy.¹⁵ On May 1, 2000, the Coalition arranged for testimony by an international authority on secondhand smoke, which added substantially to the health claims made by the Coalition. Additional

expert testimony from local physicians supplemented the testimony of Richard Hurt, a physician from the Mayo Clinic and an international leader in tobacco control, and forced Honeywell Inc to state that it had “no data to support health hazard claims.”¹⁸

The Coalition received an ambivalent response to Mayor Gary Doty’s May 2000 suggestion of creating a task force consisting of proponents and opponents of the ordinance. First, on May 1, Pat McKone (of the Duluth chapter of the American Lung Association) suggested that a task force would result in the ordinance losing momentum and would also encourage the city council to procrastinate on the issue.²⁴ However, four days later, in response to council member Donny Ness’ call for the creation of a 12-month task force, the Coalition suggested that its members would support a 3-month-long task force study but not a 12-month study. However, about 3 weeks later, during a May 22, 2000, city council meeting held to consider the task force proposal, the Coalition and the local American Lung Association chapter recruited a sufficient number of witnesses to kill the task force by convincing the council that, rather than a way to solve differences between opponents and proponents, the task force was a way to avoid legislative regulation of their restaurants and bars²⁴ by delaying—and, eventually, quietly eliminating—the pressure for the smoke-free ordinances.²⁵

The Coalition’s failure to engage industry claims of adverse economic impacts weakened its position. Coalition members were not willing to use existing research showing that smoke-free ordinances did not affect business revenues^{26–31} and feared

that any adverse economic events that occurred after the passing of the ordinance, especially during the winter months, would be attributed to them. In the words of one advocate: “We do not want any business to go out of business and become a poster child for why ordinances shouldn’t be passed” (author interview with P. McKone, June 14, 2000). The Coalition members’ silence cost them the opportunity to establish themselves as credible critics of the tobacco industry’s economic arguments.

Final Language of the First Ordinance

On June 13, 2000, the Duluth City Council voted to enact an ordinance that represented a victory on the part of the tobacco industry (Table 2). The industry prevailed because health advocates framed the ordinance as a children’s health issue, compromising their ability to credibly critique the industry’s economic claims. The ordinance allowed for smoking rooms in restaurants with the ventilation systems the industry was supporting and contained very weak enforcement provisions. Proprietors were not responsible for maintaining a smoke-free environment, there was a broad process through which restaurants could gain an exemption by claiming economic hardship, bars and the bar portions of restaurants were exempted, and restaurants that served alcohol were allowed to permit smoking after 8 PM so long as people younger than 18 years were not present. This final provision made enforcement impossible, because it allowed smoking even when “no smoking” signs were prominently displayed. The ordinance went into effect January 1, 2001.

TABLE 2—Evolution of the Duluth Ordinance

	Original Ordinance (June 12, 2000)	Revised Ordinance (May 29, 2001)
Finding: adverse health effects	Yes	Yes
Finding: possible economic hardship	Yes	Removed
Bar definition	Any establishment or portion of an establishment where one can consume alcoholic beverages	An establishment that has an on-sale liquor license pursuant to state law
Bar/restaurant definition	Not present	Any establishment that has an on-sale liquor license and a food license pursuant to state law
Other person in charge definition	Not present	Present, follows state clean indoor air law
Proprietor definition	Not present	Present, follows state clean indoor air law
Public places required to be smoke free	Retail stores, offices and other commercial establishments, public conveyances, hospitals, auditoriums, arenas, meeting rooms, common areas of hotels and motels	Same
Bowling alleys and pool halls	Excluded	Excluded until April 1, 2003
Private offices	Excluded	Excluded
Room definition	Doors not required on entries and exits “of historical significance”	Doors required on all rooms
Ventilation	May be substituted for walls “at such time as the council deems, by amendment of this ordinance, that sufficient scientific evidence supports the effectiveness of air barriers or other technologies”	Provision removed
Restaurants	Allowed to have smoking area in separately ventilated room; up to 30% of seating if no one younger than 18 years allowed in	Current separately ventilated smoking rooms (up to 30% of seating with no one under 18 allowed in) allowed to remain until April 1, 2003
Bar area of restaurant	Exempted (through definition of bar); not explicitly addressed	Smoking permitted if separate room with door and separate ventilation, so long as no one younger than 18 years be allowed in
Bars	Excluded if people younger than 18 years are not permitted to enter	Excluded without conditions
Hours of operation	Smoking allowed at restaurants that hold liquor licenses after 8 PM so long as people younger than 18 years “are not allowed to remain on the premises”	Provision removed
Private clubs	Not mentioned	Exempt, unless formed to circumvent provision of ordinance
Religious use	Exempt	Exempt
Signage	Required to “inform the public of the smoking restrictions contained in this ordinance”	“No smoking” signs required
Ashtrays, lighters, matchbooks	Not mentioned	May not be placed in smoke-free areas
Proprietor responsibility	“Nothing in this ordinance shall be construed to impose any requirements upon owners of public places”	Required to post “no smoking” signs; remove ashtrays, lighters, and matchbooks; ask people not to smoke; and ask them to leave if they persist in smoking
Hardship exemptions	Restaurant may apply for exemption if loss of sales of 15% relative to same months of previous year or 10% for 2 consecutive months “as a result of complying with this ordinance”; exemptions granted if council does not deny within 30 days	Removed
Employees entering bar area	Nonsmoking employees not required to enter bar areas “without employee’s consent”	Same
Nondiscrimination clause	Not present	Present
Relationship to Minnesota Clean Indoor Air Act	Not mentioned	“This ordinance is intended to complement the Minnesota Clean Indoor Air Act; nothing in this ordinance authorizes smoking in any location where smoking is restricted by other applicable laws”
Penalties	Proprietors exempt; size of fine not specified	Proprietors included; fines up to \$700 for first offense
Severability	Not included	Included

REACTIONS TO THE FIRST ORDINANCE

Despite the tobacco industry's victory, the industry's allies continued to press to expand the fundamental weaknesses in the ordinance by emphasizing the economic hardship exemption process, defying the ordinance, and exploiting weak enforcement. These activities alienated the city council and led to the enactment of a much stronger ordinance.

Exemptions

As has occurred elsewhere,¹ some restaurants immediately claimed that the ordinance was causing them severe economic hardship. Between February 1 and April 30, 2001, 5 of Duluth's 190 restaurants (2.5%) filed for economic hardship exemptions, and all of these requests were approved. The applicants claimed that smokers made up the majority of their patrons and, as required by the ordinance, presented sales receipt data claiming a loss of 15% of their revenue in January 2001 relative to January 2000. Neither the city of Duluth nor the city council independently assessed these revenue loss claims.

The Coalition unsuccessfully challenged each exemption and proposed changes to the ordinance to remove the exemption provision. Continuing its policy of framing the ordinance as a youth issue rather than a workplace safety issue, the Coalition suggested that restaurants exempted for hardship not be allowed to serve or employ young people. The Coalition was not able to halt the exemptions because it had failed to establish itself as a credible critic of the industry's economic claims.

The exemption claims lost legitimacy when Kay Biga, a local restaurateur and Mayor Gary Doty's election campaign co-chair, asked the city council to exempt her bankrupt restaurant because she had lost revenue in January 2001. The central issue in this fight was whether bankrupt restaurants could seek an exemption retroactively. The city council did not make such a provision, and council members were unhappy with Kay Biga's request and the mayor's insistence that the council grant an exemption anyway.

Defiance and Enforcement Problems

Encouraging defiance of ordinances and publicizing noncompliance is another standard tobacco industry tactic.¹ The Duluth *News Tribune* reported that "[t]he owners of Sammy's Pizza and the Pickwick restaurant have said publicly they were ignoring the [ordinance], which didn't allow police to cite restaurant owners who allowed smoking. Other restaurants have quietly ignored the ban and allowed customers to smoke."³² The Pickwick did not seal off its smoking section,³³ and Sammy's reopened its smoking sections.³³

By early March 2001, in response to the city council's inaction in regard to the defiance problem, Coalition members picketed the Pickwick (author interview with S. O'Neil, August 3, 2001).³⁴ This strategy galvanized the defiance issue (author interview with S. O'Neil, June 7, 2000) and enabled the Coalition to link defiance to the ordinance's lack of enforcement, thus promoting the formation of stronger enforcement provisions. After the Coalition's picketing, one of the Coalition members

observed that the open defiance "infuriated a couple of City Councilors [who felt that] the City Council's authority was challenged" (author interview with S. O'Neil, August 3, 2001).

In spring 2001, individual restaurateurs and the Duluth Hospitality Association complained that lack of enforcement and problems with the way in which the enforcement provisions were written created unfair competition and promoted defiance.^{35,36} In late April 2001, the Duluth Hospitality Association called on the Coalition to adopt its 3-point plan—establishment of a new 10-month task force to study the ordinance and its problems, continuation of the lack of enforcement, and continuation of the exemptions provision—to deal with the problems the Coalition had helped to create.

In a letter to the editor published in May 2001, a restaurant manager active in the opposition wrote: "Local government has created an unlevel playing field within the city limits of Duluth and within the Twin Ports region by targeting a selection of the hospitality industry. To further the inequalities, local government has protected businesses with a hardship exemption clause. However, many businesses cannot even apply for an exemption because they hold a liquor license."³⁷ Members of the Duluth Hospitality Association used the economic hardship exemption clause they had helped create and the division over the merits of the ordinance within the city council to argue that the ordinance generated unfair competition and propose the creation of a task force. The Coalition encouraged the mayor and the city council simply to amend the ordinance to create a strong enforcement provision.

STRENGTHENING OF THE ORDINANCE

Rather than creating a task force, the city council, on May 29, 2001, drafted amendments to strengthen the ordinance. City council members were unhappy with the opposition's defiance of the ordinance; its demands to allow exemptions for bankrupt restaurants, which members viewed as challenging the council's authority and legitimacy; and its claims that the ordinance created unfair competition. A council hearing and debate ended with a veto-proof vote in favor of a stronger ordinance (Table 2). The council defeated a motion to repeal the existing ordinance by a vote of 6 to 3, defeated a motion to allow ventilation by 7 to 2, and defeated the exemptions provision by 6 to 3, thus strengthening the enforcement provisions of the ordinance.

On June 6, 2001, Duluth Mayor Gary Doty signed the new ordinance into law, to go into effect on July 15, 2001. At the end of August, Duluth's Sales Tax Department debunked claims of widespread economic chaos, reporting essentially flat sales (a drop of 0.2%) between 2000 and 2001 in restaurants that did not have an alcohol service license and an increase in sales of 5.1% in restaurants that had such a license.³⁸

THE REPEAL REFERENDUM FIGHT

The new ordinance did not go into effect on schedule because, within weeks after Mayor Doty had signed it, opponents successfully forced a referendum vote that suspended the ordinance until there was a vote on whether or not to repeal it. Once the re-

peal petition was approved by the city of Duluth, the tobacco industry, in establishing its opposition strategy, worked with third parties (the Duluth Hospitality Association and the National Smokers Alliance), intervened directly through Philip Morris, and involved Thomas A. Briant, an industry lobbyist.³⁹ Briant, who assisted in drafting the petition and referendum language (reported by Briant as a \$2500 in-kind contribution; <http://www.smokefreecoalition.org/truth/disclosure>), downplayed the tobacco industry's role in Duluth, claiming that its role in fighting the ordinance was minimal and that "[a]fter paying all the settlements, billions of dollars to all the states, that well has just about dried up."³⁹

Briant also headed the Minnesota Accommodation Coalition, which, during 2000–2001, received nearly \$200 000 from Brown & Williamson, Lorillard, Philip Morris, and R.J. Reynolds to lobby against tobacco control measures in Minnesota.⁴⁰ On August 31, 2001, the Duluth Hospitality Association created the People's Voice Committee, a political action committee, to campaign for the referendum. Vicky Haugland, a leader of the Duluth Hospitality Association, signed People's Voice Committee's campaign finance disclosure reports.

Repeating traditional tobacco industry arguments, the People's Voice Committee claimed that the amended ordinance would create revenue and employment loss in the hospitality industry, violate business rights, impede police efforts to fight violent crime, and violate smokers' rights. It claimed that the health effects of secondhand smoke were exaggerated. It also accused the Duluth City Council of shutting the

local hospitality industry out of discussions on the amendments to the ordinance and accused health advocates of being part of "big anti-tobacco" funded by the health industry.³⁹

The People's Voice Committee denied any financial links to the tobacco industry.³⁹ However, campaign finance reports filed subsequently with the Duluth

city clerk showed that the tobacco industry provided at least 74% of the funds used in the campaign against the ordinance^{41,42} (Table 3). The industry's direct involvement in Duluth, through the activities of Thomas A. Briant, was first reported on October 30, 2001,⁴³ only a week before the election on November 6.

Additional opposition came from the smokers' rights group FORCES (Fight Ordinances and Restrictions to Control and Eliminate Smoking) and its Minnesota branch (the Minnesota Smokers' Rights Coalition), whose spokesperson claimed that the ordinance violated the rights of both individuals and businesses and that the health effects of secondhand smoke were exaggerated.⁴⁴ This effort was not reported in campaign finance disclosures.

One week before the November 6, 2001, election, Philip Morris conducted a direct mail campaign (at a cost of \$11 376) that claimed that the old ordinance respected businesses' rights and that the amended ordinance would create a large number of unnecessary lawsuits and was extreme and unfair to businesses.⁴⁵ Philip Morris's involvement became public 2 days before the repeal vote,³⁹ while its expenses (Table 3) were not reported to the Duluth City Clerk's Office until after the election.⁴⁵

In the months preceding the repeal vote, the Coalition challenged the tobacco industry's claims that the health effects of secondhand smoke were exaggerated. The Coalition sponsored an advertisement campaign in 3 local newspapers framing secondhand smoking as a health issue.^{46–48} A direct mail campaign focused on the disproportionate health effects of secondhand smoke exposure on children and encouraged citizens to vote to ratify the smoke-free ordinance. Between July 1 and December 6, 2001, the Coalition raised \$74 587 to support the ordinance (Table 4), primarily from organized health groups.

On November 6, 2001, 61% of Duluth voters approved the

TABLE 3—Tobacco Industry and Other Cash and In-Kind Contributions to Campaign to Repeal the Duluth Ordinance

Source	Contribution to People's Voice Committee, \$	Direct Expenditure, \$	Total, \$ (%)
Tobacco industry			
Philip Morris		11 376	
R. J. Reynolds	5 000		
Brown & Williamson	2 500		
Lorillard	1 800		
Denfeld Tobacco	100		
Thomas A. Briant (tobacco lobbyist)	4 128		
Subtotal	13 528	11 376	24 904 (74)
Other contributions			
Duluth Hospitality Association ^a	1 175		
Paulucci International	2 500		
Rohlfing Distributing	1 000		
Superior Beverages	1 000		
Michaud Distributing	500		
Better Brands	500		
New London Corp	500		
Hometown Distributors	250		
Incline Station	250		
Country Lanes North	250		
Stadium Lanes	250		
Lakeview Castle	100		
Silver Hammer	100		
Champps Americana	100		
Bedrock Bar	100		
Country Kitchen	100		
Subtotal	8 675		8 675 (26)
Grand total	22 203	11 376	33 579 (100)

Note. Data were derived from the following sources: City of Duluth, City Clerk Office, campaign financial reports, filings for August 27, 2001, to October 25, 2001, and for October 26, 2001, to December 26, 2001, and from References 41, 42, and 47. Only contributions of \$100 or more are itemized.

^aTo be conservative in assessing the tobacco industry contribution, we did not consider the Duluth Hospitality Association to be part of the industry; if it were considered part of the tobacco industry, 78% of identified contributions would have been provided by the industry.

TABLE 4—Contributions to Vote Yes! Yes! Yes! for Healthy Air Committee

	Contribution, \$
Twin Ports Youth and Tobacco Coalition	26 731
Minnesota Partnership Against Tobacco	24 500
American Lung Association of Minnesota	21 747
Other	1 609
Total	74 587

Note. Data were derived from Twin Ports Youth and Tobacco Coalition.⁵² Only contributions of \$100 or more are itemized.

continuation of the original ordinance, and 53% approved the amendments to place enforcement responsibilities on restaurant owners and eliminate exemptions. The amended ordinance went into effect on November 13, 2001.

The Duluth Hospitality Association vanished. In July 2002, after the fights over the ordinance had ended, the association no longer had a telephone listing.

DISCUSSION

Once health advocates initiated a community-wide campaign to develop a smoke-free ordinance in November 1999, the tobacco industry reacted quickly, using a combination of established and new tactics to oppose the ordinance. Duluth was particularly important because it was the first major city in Minnesota to develop an ordinance, and therefore it was setting a precedent for the rest of the state. The tobacco industry nearly succeeded in its efforts, because health advocates made tactical errors in the framing of the original ordinance as a youth issue and failed to critique the industry's economic claims. The industry used 4 established strategies^{1,4,49} in its campaign: recruitment of allies in the hospitality industry,^{5,20} recruitment of a

local "hospitality association," accommodation, and a referendum repeal campaign.

The Duluth case also illustrates 2 new industry tactics. The first was the direct financing and recruitment of the Minnesota Licensed Beverage Association to fight the ordinance, mostly on accommodation grounds. Licensed beverage associations have been recruited primarily for state-level legislative battles,²⁰ and their use in fighting a local ordinance signifies a new tactical development.

Second, the tobacco industry became more openly involved in fighting the Duluth ordinance through financial support received from the Minnesota Licensed Beverage Association (beginning in February 2000), use of a major tobacco industry contract lobbyist specializing in accommodation issues⁴⁰ (Thomas A. Briant), and financing of the People's Voice Committee. (Although several elements—the timing of the creation of the Duluth Hospitality Association, the fact that it disappeared after the ordinance fight ended, the policy positions that it advocated, and the common funding with the tobacco industry of the People's Voice Committee—suggest strong linkages between the Duluth Hospitality Association and the tobacco industry, we do not have direct documentary evi-

dence that the tobacco industry created or financed it.) In part as a result of pressure from health groups and the media, the tobacco industry surfaced from the shadows to fight the ordinance.

As the ordinance fight continued, the Duluth Hospitality Association began to accuse health advocates of being allies of "big health," an accusation that did not take root in Duluth. In addition, Philip Morris used a telephone bank and a direct mail campaign, which health advocates exposed. The denials of industry involvement by the Duluth Hospitality Association and the Minnesota Licensed Beverage Association never gained credibility in Duluth.

Duluth would have seen a faster passage of a strong ordinance if the Coalition had not made a number of tactical errors, including seeking to enlist the restaurant/hospitality industry as an ally in the development of the ordinance; framing the issue of secondhand smoke as a children's health issue (as opposed to a workplace safety issue^{1,49}); allowing the tobacco industry's claims of economic loss to go unchallenged; allowing the passage of an initial ordinance with economic hardship exemptions, ventilation enforcement provisions; and nearly losing the fight on the industry's task force demands. Health advocates' fears that business would drop and that they would be blamed for it proved unfounded. A year after the strengthened ordinance went into effect, the *Duluth News Tribune* reported that restaurant business improved following its implementation.⁵⁰

While clean indoor air laws are largely self-enforcing once they are established, ensuring vigorous implementation and enforcement is crucial to long-term success. It

is important that health advocates continue to monitor implementation and enforcement after the law has been passed.⁵¹ Framing the issue of secondhand smoke as a children's health issue was a particularly important tactical error, leading to food serving establishments being classified according to the ages of their patrons. This, in turn, led directly to the provisions relating smoking to patron age and time of day, which made it virtually impossible to enforce the ordinance. The fact that ordinance opponents overreached after they had succeeded in having a weak ordinance passed provided advocates with an opportunity to enact a strong and enforceable ordinance.

Finally, an unfortunate consequence of the errors made by the Coalition is that the problematic provisions included in the original ordinance were quickly replicated in other states, including Iowa and Oregon. The Duluth experience demonstrates the importance of not accepting weak compromises at the 11th hour in negotiations in order to get something rather than nothing, hoping to revisit and fix a flawed policy later. Health advocates were able to recover from this situation only because of overreaching by protobacco forces. ■

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T. Tsoukalas did the primary data collection. Both of the authors contributed to writing and editing the article.

Human Participant Protection

The protocol for the telephone interviews used in this study was approved by the committee on human research of the University of California, San Francisco. All interview participants provided informed consent.

References

- Magzamen S, Glantz S. The new battleground: California's experience with smoke-free bars. *Am J Public Health*. 2001;91:245–252.
- Samuels B, Glantz S. The politics of local tobacco control. *JAMA*. 1991; 16:2110–2117.
- Samuels B, Begay M, Hazan A, Glantz S. Philip Morris' failed experiment in Pittsburgh. *J Health Polit Policy Law*. 1992;17:329–351.
- Traynor M, Begay M, Glantz S. New tobacco industry strategy to prevent local tobacco control. *JAMA*. 1993; 270:479–486.
- Ritch W, Begay M. Strange bedfellows: the history of collaboration between the Massachusetts Restaurant Association and the tobacco industry. *Am J Public Health*. 2001;91:598–603.
- Fichtenberg CM, Glantz SA. Effect of smoke-free workplaces on smoking behaviour: systematic review. *BMJ*. 2002;325:188–194.
- US Dept of Commerce. 1997 economic census: summary statistics for St. Louis County. Available at: <http://www.census.gov/epcd/ec97/mn/MN137.htm>. Accessed September 10, 2001.
- Stauber J, Rampton S. *Toxic Sludge Is Good for You*. Monroe, Maine: Common Courage Press; 1995.
- Minnesota Smoke Free Coalition. Letter from Judy Knapp, executive director, Minnesota Smoke Free Coalition, to Greg Gilbert, president, Duluth City Council, regarding lobbying function of Minnesota Licensed Beverage Association. May 18, 2000.
- Tobacco Institute. The Tobacco Institute 1994 proposed budget. Lorillard Tobacco Co. November 12, 1993. Bates No. 91082882-91082938. Available at: http://www.lorillarddocs.com/cgi_bin/rsasearch.asp. Accessed June 4, 2003.
- Tobacco Institute. The Tobacco Institute 1997 budget (state activities division). December 9, 1996. Bates No. TI16560074/0118. Available at: http://www.tobaccoinstitute.com/PDF/TI16560075_0118.PDF. Accessed June 4, 2003.
- Tobacco Institute. The Tobacco Institute 1996 budget (state activities division). October 24, 1995. Bates No. TI6550933/1019. Available at: http://www.tobaccoinstitute.com/PDF/TI16550933_1019.PDF. Accessed June 4, 2003.
- Lucas PJ. 1999 Philip Morris Inc. associate membership dues to Minnesota Licensed Beverage Association [letter]. February 2, 2000.
- Jackson S. Smoking ban proponents boost lobbying. Available at: <http://www.duluthnews.com/docs/smoke/smoke517.htm>. Accessed February 4, 2001.
- Jackson S. Smoking ban debated. *Duluth News Tribune*. April 26, 2000:B1, B2.
- Skog J. Amid questions and uncertainties, council delays vote on ban: Duluth News Tribune; 5 May 2000. URL: <http://www.duluthnews.com>. Accessed February 5, 2001.
- Center for Tobacco Research. Research services agreement between Martin Marietta Energy Systems, Inc. and the Council for Tobacco Research USA, Inc. pertaining to "methodology for quantitating exposure to inhalable ambient tobacco smoke." Legacy Tobacco Documents Library. September 26, 1985. Bates No. CTRSP/Files024617/4631. Available at: <http://www.legacy.library.ucsf.edu/tid/mpl8aa00>. Accessed June 4, 2003.
- Honeywell Inc. Letter from Jannell Siegried to Terrence Clark regarding health claims on Honeywell Inc.'s ventilation products. June 12, 2000.
- Duluth City Council Hearing*. Duluth, Minn: Duluth Public Access Television; 2000.
- Dearlove JV, Bialous S, Glantz S. Tobacco industry manipulation of the hospitality industry to maintain smoking in public places. *Tob Control*. 2002;11: 94–104.
- National Smokers' Alliance Exposed: A Report on the Activities of Philip Morris's #1 Front Group*. Berkeley, Calif: American Nonsmokers' Rights Foundation; 1998.
- Levin M. Smoker group's thick wallet raises questions; funding: alliance amassed \$49.9 million but very little from members' dues, IRS reports show; other records cite backing from tobacco firms. *Los Angeles Times*. March 29, 1998:21.
- Philip Morris Inc. A smoker's alliance, draft. July 9, 1993. Bates No. 2022839671/9727. Available at: <http://www.legacy.library.ucsf.edu/tid/fmo44e00>. Accessed June 4, 2003.
- Skog J, Jackson S. Mayor calls for a bayfront-like task force to assess issue: some councilors not so sure. *Duluth News Tribune* [on-line serial]. Available at: <http://www.duluthnews.com>. Accessed June 6, 2000.
- Skog J. Experts doubt efficacy of nonlegislative approach to curb public smoking. *Duluth News Tribune* [on-line serial]. Available at: <http://www.duluthnews.com>. Accessed June 11, 2001.
- Glantz SA, Smith LR. The effect of ordinances requiring smoke-free restaurants on restaurant sales. *Am J Public Health*. 1994;84:1081–1085.
- Glantz SA, Smith LR. The effect of ordinances requiring smoke-free restaurants and bars on revenues: a follow-up. *Am J Public Health*. 1997;87: 1687–1693.
- Glantz SA, Charlesworth A. Tourism and hotel revenues before and after passage of smoke-free restaurant ordinances. *JAMA*. 1999;281:1911–1918.
- Hyland A, Cummings KM. Restaurant employment before and after the New York City Smoke-Free Air Act. *J Public Health Manage Pract*. 1999;5: 22–27.
- Hyland A, Cummings KM, Nauenberg E. Analysis of taxable sales receipts: was New York City's Smoke-Free Air Act bad for restaurant business? *J Public Health Manage Pract*. 1999;5: 14–21.
- Glantz SA. Smoke-free restaurant ordinances do not affect restaurant business. Period. *J Public Health Manage Pract*. 1999;5:vi–ix.
- Helgeson B. Group seeks repeal of smoking ban—members of local hospitality industry plan push for vote. *Duluth News Tribune*. May 6, 2001:B1, B2.
- Helgeson B. Sammy's ignores smoke ban—owners want to fight ordinance in court; city deciding how to handle those that don't comply. *Duluth News Tribune*. March 28, 2001:B1, B2.
- Renalls C. Amid protests, Pickwick's owner says he won't comply with Duluth's smoking ban. *Duluth News Tribune*. March 3, 2001:B1, B2.
- Perrella J. Letter from J. Perrella, Sammy's Pizza & Restaurant, to Mayor Gary Doty and Duluth City Council. March 22, 2001.
- Perrella J. Restaurants are innocent victims in anti-smoking war [opinion]. *Duluth News Tribune*. April 22, 2001:A19.
- Salls T. Smoking ban needs compromise [letter]. *Budgeteer News* [on-line serial]. Available at: http://www.duluth.com/placed/index.php?story_id=72526. Accessed May 16, 2001.
- Change in Retail Sales in Duluth: 2000–2001*. Duluth, Minn: City of Duluth Sales Tax Dept; 2001.
- Myers J. Spending frames smoking debate. *Duluth News Tribune*. November 4, 2001:A12, A13.
- Minnesota Smoke Free Coalition. Tobacco lobbying disclosure reports, 2002. Available at: <http://www.smokefreecoalition.org/truth/disclosure/index.asp?y=2001>. Accessed June 26, 2002.
- People's Voice Committee. *Campaign Financial Report for Period of 27 August 2001 to 25 October 2001*. Duluth, Minn: City Clerk's Office; 2001.
- People's Voice Committee. *Campaign Financial Report for Period of 26 October 2001 to 6 December 2001*. Duluth, Minn: City Clerk's Office; 2001.
- Myers J. Smoking ban supporters question lobbyist's contribution. *Duluth News Tribune*. October 30, 2001:A5.
- Frederick C. Lights out: smokers say ban negates right to enjoy a meal. *Duluth News Tribune*. November 3, 2001:A1, A8.
- Philip Morris Inc. Campaign Financial Report*. Duluth, Minn: City Clerk's Office; 2001.
- Twin Ports Youth and Tobacco Coalition. If you want to know how poisonous secondhand smoke is to your children, ask us [advertisement]. *Duluth News Tribune*. November 4, 2001:A23.
- Twin Ports Youth and Tobacco Coalition. Clear the air for kids—and workers! [advertisement]. *Duluth Labor World News*. October 10, 2001:6.
- Twin Ports Youth and Tobacco Coalition. Secondhand smoke is poisoning our kids—and us [advertisement]. *Duluth Senior Federation News*. October 2001:4.
- Glantz S, Balbach E. *Tobacco War: Inside the California Battles*. Berkeley, Calif: University of California Press; 2000.
- Frederick C. Smoking ban: businesses breathing easier. *Duluth News Tribune*. November 15, 2002:A1, A7.
- Jacobson P, Wasserman J. The implementation and enforcement of tobacco control laws: policy implications for activists and the industry. *J Health Polit Policy Law*. 1999;24:567–598.
- Twin Ports Youth and Tobacco Coalition. *Campaign Financial Report: Filings From July 1, 2001 to December 6, 2001*. Duluth, Minn: City Clerk's Office; 2001.