

PROPOSED SMOKING ORDINANCE POSITION PAPER

PREPARED BY
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THE FREE MARKET WILL ENSURE MORE SMOKE-FREE RESTAURANTS WITHOUT GOVERNMENT REGULATION

WHO IS THE BOONE LIBERTY COALITION?

The Boone Liberty Coalition (BLC) was formed by local citizens in Columbia and Boone County concerned about issues of personal liberty, economic freedom, and property rights after the 2004 elections. When we realized in 2005 that there was no one speaking out against the proposed restaurant and bar smoking ban, it became the first issue our group would address. The BLC is comprised solely of local residents. It is not a tobacco front group and any money spent has come from individual members.

OUR STANCE

The Boone Liberty Coalition is opposed to the proposed smoking ban for four main reasons. Subsequent pages expand on each of these points.

1. Freedom of Choice. Employees are able to choose their workplace, thereby limiting their exposure to secondhand smoke. The high turnover amongst restaurant employees ensures that non-smoking positions are available to employees who desire such a work environment. Customers are also able to select if they will patronize a smoking or non-smoking environment. Additionally, their purchasing power and demands will continue to move Columbia's establishments in a smoke-free direction.
 2. The Free Market is Working. The Boone Liberty Coalition undertook a survey of local restaurants that revealed that nearly two-thirds of restaurants in Columbia already voluntarily ban indoor smoking. Additionally, 17% of the restaurants that allowed smoking three years ago have now gone smoke-free. If this rate of change stays constant, over 80% of restaurants could be smoke-free in five years.
 3. Economic Impacts. Many advocates of smoking bans point to studies which show no economic impact or a gain in sales tax receipts after bans have been enacted in other locales. These studies ignore the individual business owner who may be affected if they are in one of several niches frequented by smoking customers. This section contains several examples of business owners who have been negatively impacted by smoking bans in their communities.
 4. Health Risk. The health risk from secondhand smoke does not rise to a level that requires government regulation to ban smoking in privately-owned bars and restaurants. The health risk is very small when compared to long-term smokers. Chemical concentrations in secondhand smoke are well below established limits. Ventilation can reduce secondhand smoke and improve indoor air quality.
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OUR RECOMMENDATIONS

We cannot say if the proposed smoking ban will improve the health of employees and customers in the Columbia area. However, we see that Columbia's restaurants are already becoming smoke-free without any urging from the government. Additionally, if Columbia's experience under a smoking ban mirrors other communities, we will see local business owners suffer economic hardships and potential business closures. For these reasons, we urge the city council to either 1) table the proposed smoking ban for a period of not less than five years and reevaluate the number of smoke-free restaurants in the city after the free market has had additional time to work in Columbia, or 2) consider something like the Gregali bill which is under consideration in St. Louis, where a business would have to clearly designate itself as smoke-free, smoke-restricted, or smoking with a sign at the front door.

1 - FREEDOM OF CHOICE

The Boone Liberty Coalition is against the smoking ban, but not because smoking is a good idea. It isn't. And not because voluntarily exposing oneself to secondhand smoke is good either.

It is because we as a society let people make that choice.

The restaurant industry is generally categorized as a service industry. One does not go to a restaurant simply to get one's needed requirement of calories. There are cheaper alternatives to that, such as a grocery store. Instead, restaurants concentrate on the entertainment aspects. Simply put, the choice of a restaurant to allow smoking or not smoking is a very critical one. Restaurants that ban smoking do so to appeal to the patrons. Restaurants that permit smoking do so to appeal to that portion of the population that considers having a smoke with their meal part of the enjoyment of the meal. The decision to allow or not allow smoking is not arbitrary, but calculated to appeal to the segment of the market they have chosen to serve.

Walking into, or working at, a restaurant that allows smoking is a voluntary behavior. It is a risk that the individual is knowingly taking part in. Unlike a hidden danger, such as asbestos exposure, restaurants do not hide their smoking policies. With nearly two-thirds of Columbia's restaurants already smoke-free, those who do not want secondhand smoke have plenty of alternate choices.

Employees have over 100 smoke-free restaurants to choose from if they so wish. Workers commonly choose jobs with work-related risks, such as driving in a pizza delivery job or working a fryer. If an employee is concerned about the possible risks in a smoking establishment, there are other options available to them. **National figures on restaurant employee turnover indicate that over 85% of restaurant workers move to another job within one year.** This statistic shows that employees do not consider themselves "stuck" at their current job and have other employment opportunities if they are not satisfied with their workplace.

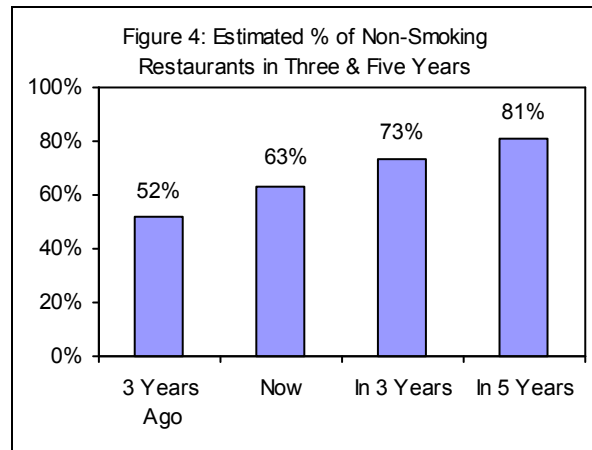
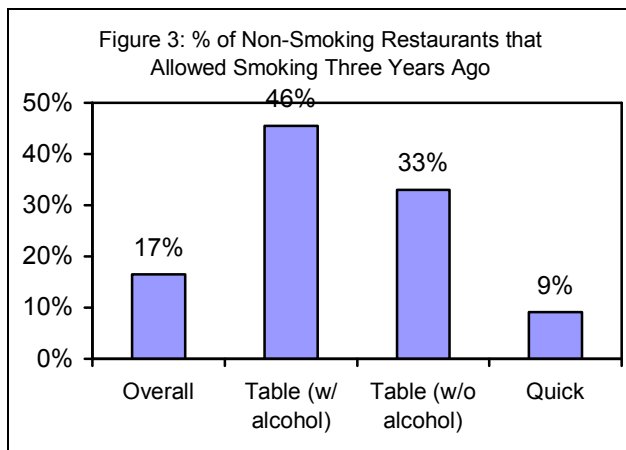
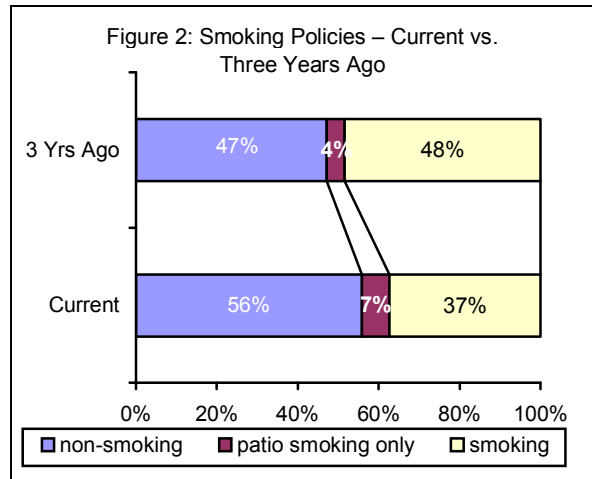
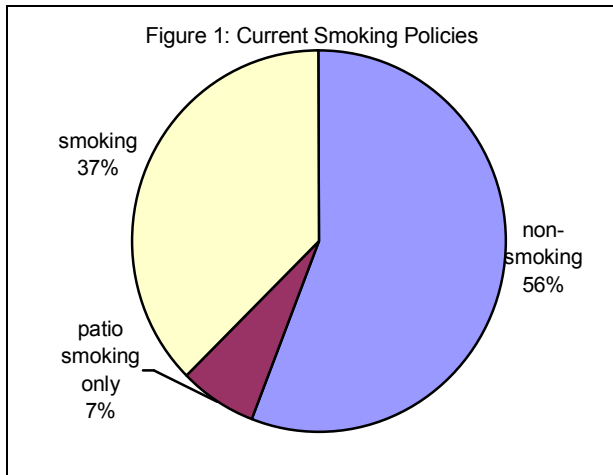
Customers are also able to take advantage of the numerous non-smoking options in Columbia's restaurant market. However, they also have the added power to gently push restaurants to a non-smoking format by patronizing smoke-free restaurants and encouraging smoking restaurants to make the switch. By voting with their wallet, customers provide a strong motivation for business owners to voluntarily make their establishments smoke-free.

This anti-choice smoking law will remove the business decision from those who know their customers best: the local business owners. Some restaurants will ban smoking to offer an environment that many customers prefer. Other establishments will continue to allow smoking, offering a niche market for those patrons who want the option of smoking during a meal. In both cases, the restaurant owner is deciding if they will allow a legal product to be used on their private property.

2 - THE FREE MARKET IS WORKING

A recent census-type survey of Columbia restaurants by the Boone Liberty Coalition strongly suggests that **the free market is providing non-smoking restaurants:**

- **Nearly two-thirds (63%) of Columbia’s restaurants are currently non-smoking or restrict smoking to patio areas** (see Figure 1)
- This figure is up nearly 11 percentage points over the last three years (52% non-smoking three years ago vs. 63% currently – see Figure 2)
- 65% of restaurants opened in the last three years are smoke-free or allow smoking only on patios (data not shown)
- Of the non-smoking restaurants that were in business three years ago:
 - 17% previously allowed smoking (see Figure 3)
 - **At this rate of change, the percentage of non-smoking restaurants in Columbia could exceed 70% in three years and 80% in five years** (see Figure 4)



3- ECONOMIC IMPACTS

Those supporting a smoking ban will undoubtedly reference studies that supposedly prove that smoking bans do no harm. Many of these aggregate studies are flawed because they include businesses that one would not expect to be hurt by a ban, exclude those that would be hurt, and do not take into account other growth factors like population and tax increases. We could argue these results all day long. **However, there is one impact without dispute – a smoking ban will severely harm selected businesses that cater to a smoking clientele**, including sports bars, late-night restaurants, and establishments that tend to serve blue-collar workers.

Let's examine what has happened following the implementation of a smoking ban in cities with similar geographical or socio-economical bases:

- Arnold, Missouri
 - Business fell 30% at Krieger's Pub & Grill¹
 - Denny's was forced to delay remodeling plans after sales declined 14-15% or about \$15,000 a month²; seven employees quit because they could no longer get regularly-scheduled hours²; tips dropped from \$125 per night to \$75³; they may close after 25 years in the same location²
 - Richardson Square, a new shopping center, could not attract an anchor restaurant – TGI Fridays, Chili's and Chevy's all refused⁴
 - Randy Crisler won an alderman seat on a campaign of repealing the smoking ordinance; a bartender by trade, Randy had to switch jobs due to lost business, costing him seniority, benefits and \$1,000 a month in tips⁵
- Ballwin, Missouri
 - Sales are down 50% in the dining room and \$200,000 overall at Harry's West⁶
 - The owner of the French Quarter said he is losing customers to neighboring communities and will be out of business in six months⁶
 - Business is down 35% at The Seventh Inn⁶
 - Longhorn Steakhouse has reported bar losses of over 50% and no increase in restaurant sales and it now closes an hour earlier every day⁷
- Other college towns
 - 73 bars in Madison, Wisconsin report sales were down by roughly one-third; for instance, at the Buckeye Inn, bar business had declined 23%, the number of bartenders on Friday night had gone from three to one, and beer orders had plummeted from 100 cases per week to 25⁸
 - A sampling of effects in Lawrence, Kansas: 1) the owner of the Hereford House, the state's biggest restaurant and a \$2 million investment in the community, says the smoking ban is draining \$10,000 a week from his business and he may have to close⁹, 2) Nick Carroll, owner of two bars says, "Downtown is taking a major hit...Is it even worth being in business?", because sales have stagnated, and 3) sales at Johnny's Tavern were down 15-20%, primarily among high-margin, steady customers¹⁰

Also, a senior economist at the Federal Reserve has shown, at best, no change in restaurant sales in Maryville, Missouri¹¹, not the dramatic improvement that has been cited by Breathe Easy Missouri. Others have shown an 11-29% loss when you factor in all relevant factors (like increased student population)¹².

In each of these cities – and others like Appleton, Wisconsin¹³ -- efforts are underway to repeal or greatly modify the smoking bans due to the devastating effects on selected businesses.

4 - HEALTH RISK

The health risk from secondhand smoke does not rise to a level that requires government regulation to ban smoking in privately-owned bars and restaurants.

- The health risk from secondhand smoke is very small when compared to long-term smokers

There are no documented deaths from secondhand smoke. The estimated number of deaths is calculated from epidemiology studies. These studies try to determine the relative risk of lung cancer and heart disease for individuals who have never smoked but who have long-term frequent exposure to secondhand smoke.

A relative risk of 1.0 means that no cause and effect was found. A number greater than 1.0 does not necessarily mean that a causal relationship has been established unless the results are statistically significant. Some argue that you need a relative risk greater than 2.0 to confirm a causal relationship.

The relative risk of lung cancer for long-term smokers has been found to be anywhere from 10.0 to 25.0. An EPA study¹⁴ found a relative risk of lung cancer in individuals who have never smoked, but who have long-term frequent exposure to secondhand smoke, of 1.19. **Clearly the risk of lung cancer from secondhand smoke is very small when compared to long-term smokers.**

- Chemical concentrations in secondhand smoke are well below established limits

We are exposed to chemicals constantly in the water we drink, the food we eat, and the air we breathe. Coffee has over 1000 chemicals in it, yet we don't think twice about drinking it. Of the 4000 chemicals in secondhand smoke, less than 100 can be easily measured.

Many of the chemicals in tobacco smoke that can be toxic or carcinogenic are common byproducts of combustion that can be found in car exhaust, smoke from grilled meat, wood smoke, and burning candles.

The Occupational Safety and Health Administration (OSHA) is the lead agency for regulating workplace safety. OSHA sets standards for the Permissible Exposure Levels to chemical contaminants in air, including all those found in secondhand smoke.

A study by Littlewood & Fennel¹⁵ measured the levels of air contaminants from cigarette smoke in an enclosed room without ventilation. **For a room the size of the city council chambers, it would require over 8000 people smoking four cigarettes per hour to reach the most restrictive permissible level – without any ventilation.**

- Ventilation can reduce secondhand smoke and improve indoor air quality

In 2001, the Chemical and Analytical Sciences Division of Oak Ridge National Laboratory released the study "Environmental Tobacco Smoke in the Nonsmoking Section of a Restaurant: A Case Study"¹⁶. Their conclusion was "The data indicate that it is possible to reduce ETS in the nonsmoking section to levels that are comparable to those encountered in similar facilities in which smoking is prohibited altogether."

Littlewood & Fennel in their study concluded that **"Inadequate ventilation, not Environmental Tobacco Smoke, is the danger"** and **"It is entirely possible that buildings ventilated to a level to comfortably accommodate smokers would promote higher indoor air quality overall."**

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