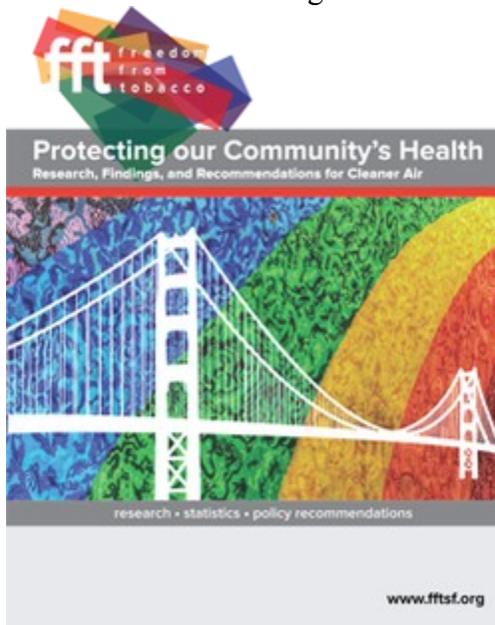


Freedom From Tobacco

A Case Study

In 1994, San Francisco passed a law, Article 19F in the San Francisco Health Code, prohibiting smoking in all enclosed places of employment including restaurants and bars. Article 19F provides protection from secondhand smoke by prohibiting smoking in enclosed and unenclosed areas. *Enclosed areas* include health and educational facilities, business and non-profit establishments, libraries and museums, child care facilities, sports arenas, theaters, conventions, restaurants, homeless shelters and, with some exceptions, bars and taverns, hotels, tobacco shops, and enclosed common areas of multi-unit housing complexes. *Unenclosed venues* include service waiting areas (e.g., bus stops, ATM lines, ticket lines, etc.), farmers markets, outdoor dining areas of restaurants and cafes, transit stops and, with some exceptions, stadiums and residential and commercial building entrances.



Freedom from Tobacco (FFT) is a project of the San Francisco Lesbian Gay Bisexual Transgender (LGBT) Community Center whose broad goal is to help reduce exposure to smoking and secondhand smoke (SHS) in the LGBT community. Tobacco has long had a disproportionate impact in the LBGTT community. Gay men and transgender persons smoke about twice as much as all men; lesbians smoke nearly three times as much as all women; and LGBT young adults 18-24 smoke over 2.5 times as much as all young adults.¹ These trends are not accidental.

Tobacco corporations, which disproportionately target the LGBT community, blatantly exploit deeply held aspirations within the LGBT community for recognition, respect and equality with advertising that ties the LGBT movement for equal civil rights with the right to smoke. For

¹ LGBT smoking prevalence is from California Lesbian, Gay, Bisexual, and Transgender Tobacco Use Study, 2004; general population smoking prevalence is from California Tobacco Survey, 2002.

example, using the rhetoric of freedom, one cigarette ad that ran during Gay Pride month a few years ago proclaimed the right “to speak, to choose, to marry, to participate, to be, to disagree, to inhale, to believe, to love, to live.” This cynical strategy has convinced many in the LGBT community that laws restricting or prohibiting secondhand smoke take away the freedom of smokers to smoke where they want. Thus the decision to name this project Freedom from Tobacco was a strategic one intended to counteract the problematic messages from the tobacco industry.

Under contract to the San Francisco Tobacco Free Project, San Francisco Department of Public Health (DPH), FFT undertook a project with 7 advocates representing a wide range of diversity in (26 to 57 years old), by gender (3 females, 2 males, and 2 transgender), and by ethnicity (African American, Latina, Vietnamese, and white). Their research found several San Francisco bars where smoking is occurring in violation of the law, and where non-smokers are exposed to secondhand smoke. The advocates selected this problem because compelling evidence in the literature reports no safe level of secondhand smoke exposure for anyone either indoors *or* outside, and that even investing in expensive air filter equipment does not effectively clear the air of toxic smoke. In fact, studies have found that having an outdoor smoking area adjacent to an indoor non-smoking area results in as bad or worse air quality conditions inside the venue than previous to the ban. One alarming study showed that outdoor air quality at pubs and bars with a semi-enclosed outdoor smoking area (e.g., with a roof covering 50% or more of the upward air flow and walls enclosing 75% of the total wall space) had peak measurements within the established “very hazardous” level set by the Environmental Protection Agency (EPA).

Community Action Model

In implementing its action, Freedom From Tobacco utilized the Community Action Model (CAM), a process that builds on the strengths or capacity of a community to create change from within and mobilizes community members and agencies to change environmental factors promoting economic and environmental inequalities. CAM steps include:

Train participants to develop skills, increase knowledge and build capacity.

Do a community diagnosis to find the root causes of a community concern or issue and discovering resources to overcome it.

Choose an action to address the issue of concern. The action should be achievable, have the potential for sustainability, and compel change for the wellbeing of all.

Develop/implement an action plan which may include an outreach plan, media advocacy, developing and advocating for a model policy, presentations, and evaluation.

Enforce/maintain the action after it is successfully completed to maintain it over the long term with enforcement by appropriate bodies.

Careful reading of Article 19F revealed that the law allows the DPH Director to issue regulations that would help to clarify and enforce the law. FFT was interested in pursuing the enforcement of the existing law by identifying areas of confusion or conflict in the law that could be clarified with the issuance of regulations.

Upon their analysis of Article 19F, the FFT project advocates found several gray areas related to smoking in bars or taverns that they believed needed to be clarified:

- The law prohibits smoking in bars or taverns, except for the portion of an outdoor patio that is at least 10 feet away from the entry, exit or operable window of the bar or tavern. Some patios that allow smoking have temporary awnings or overhead covers and some have partial ceiling spaces. The definitions in the law of “enclosed” and “outdoor patio” conflict with each other, creating confusion over whether current patios are in compliance. Nor does the law clearly define what constitutes an entry or exit to a patio area so that “10 feet away from the entry, exit or operable window” of the bar could be properly measured.
- The law defines bars and taverns as business establishments primarily devoted to the serving of alcohol beverages for consumption by patrons, and in which the serving of food is only “incidental” to the consumption of those beverages. If bars are serving more than “incidental” food, they would be a restaurant, not a bar, and subject to the same non-smoking laws that restaurants are. However, the law does not define what “incidental” means.

The advocates also believed that some bars were not in compliance with the requirement that “no smoking” signs be posted in a clear and prominent way in any area where smoking is prohibited under Article 19F and that enforcement on the part of the City was not being done.

The advocates first collected information about the nature and scope of the secondhand smoke problem in predominantly gay bars in San Francisco. (As an LGBT community project, FFT wanted to focus primarily on venues serving that community, but realized that since no other project in San Francisco was doing this, they needed to incorporate a broader range of venues, both straight and gay, from various parts of the city.) Their research included measuring air quality in the patio areas of eight bars; compiling data on violations of smoking and SHS laws in bars; researching the economic effect of prohibiting smoking on bars; conducting a public opinion survey among people attending Pride 2011 events; and interviewing bar owners.

Air quality in patio areas of bars. In partnership with a University of California San Francisco (UCSF) researcher, FFT measured the air quality at four San Francisco bars with backyard patios that are frequented by the LGBT community. Average measurements at two patios fell within the EPS “unhealthy” range; the third rated as “unhealthy for sensitive groups,” and the fourth rated as “moderate.” Peak readings at all four venues were in the “unhealthy” range, and some extended into the “very unhealthy” and “hazardous” levels. The three spaces with the more dangerous levels each had overhead coverings of some kind over at least 50% of the backyard, while the space with fewer “unhealthy” measurements had minimal overhead coverage.

Compliance by bars. The advocates visited 35 bars to compile data on their current level of compliance with Article 19F. The findings confirmed the impressions of advocates that many bars are not in compliance with the law. Key findings among the 35 venues include:

- Ten were determined to be in violation of longstanding law.
- Smoking inside a venue was observed in 6 cases, and in one case it was a permitted area.
- Only about 1/3 of venues had entrance signs stating that smokers must go to the curb to smoke.

- Of 28 bars where any smokers were observed smoking in front, smokers at 18 were closer to the bar than the curb.

Of 23 venues with side or rear patios:

- Eight had at least 50% roof coverage over the patio.
- Only one had signage referring to the 10 foot restriction.
- 15 had at least one wall extending from the building and 15 had walls or fences at least 10feet high.
- 10 venues were serving, of which 8 had written menus and 5 offered a full range of food.
- At 5 venues, customers were eating in the patio with smokers present, and at 2 of those venues, food was also being prepared in the patio.

Economic impact of SHS laws on bars. The advocates found that despite commonly held beliefs, all rigorous, scientifically conducted studies have shown that bars do *not* suffer financially from secondhand smoke laws. While many bar owners initially feared losing business by going smoke-free, some reported actually making *more* money after going smoke-free. For example, a bar/restaurant in El Paso, Texas that expected to lose business to casinos outside town and businesses across the border in Ciudad, Juarez, is instead making *more* money in both the restaurant and the bar. In addition, bars *save* money by going smoke-free due to reduced maintenance expenses, lower insurance rates, and lower labor costs due to decreased sick days. The literature also confirms that smoke-free bars in communities adjacent to other communities where smoking is allowed in bars do not make less money, and the bars that allow smoking do not make more money than they did before this difference existed.

FFT Proposed Guidelines to Article 19F

1. The law states that smoking is not allowed within ten feet of the “entry, exit, or operable window” on outdoor patios of bars.

Guideline: Bars with outdoor patios must mark the specific areas where smoking is not permitted. Signs or floor markings must be located exactly at the 10-foot point and clearly indicate the exact areas where smoking is prohibited.

2. The law states that outdoor patios that allow smoking cannot have a ceiling and must be “open air.”

Guideline: A “ceiling” is defined as an overhead covering composed of any material, whether temporary or permanent, including patio umbrellas. All outside areas covered by a ceiling must be smoke-free. The “entry” or “exit” of a bar or tavern’s outdoor patio shall be defined as the place where the ceiling ends and the open air begins. Smoking is prohibited under this covered area and within 10 feet of where the uncovered section begins.

3. The law states that bars can only serve “incidental” food.

Guideline: “Incidental” food shall be defined as no more than a three item bar snack menu serving hot dogs, french fries, etc. If special events include more extensive food than this definition allows, the premises must be entirely smoke-free during that event. This applies regardless of whether the food is sold by the business, by outside vendors, given in exchange for a donation by the bar or by an outside agency, or provided for free.

4. The law states that smoking is prohibited in outdoor waiting lines.

Guideline: Businesses must post temporary signs at any time there is a line outside waiting to enter the business which state that smoking is prohibited in line. Signs must be placed 20 feet apart.

5. The law states that smoking in front of buildings is only allowed “at the curb” unless there is no curb, in which case smoking is prohibited within fifteen feet of the entrance.

Guideline: “At the curb” is defined as within one foot of the edge of the curb. Under no circumstances is smoking permitted closer than at the curb. In cases of crowding, residents or business patrons may stand at

the curb in front of other properties.

Public opinion surveys. Project advocates created and field tested a 6-question written survey that was distributed at Pride 2011 events, including the Dyke March, the Trans March, and the FFT booth at the Pride Celebration. Over 1,300 surveys were collected, with results as follows:

- Over 80% of respondents are bothered by SHS in outdoor public areas.
- Over 90% believe that SHS in outdoor dining areas is harmful.
- Over 82% believe that SHS in outdoor patios of bars and clubs is harmful.
- Among 578 respondents who go to LGBT community bars and clubs in San Francisco, over 80% believe that SHS in outdoor patios in these venues is harmful.

Bar owners. Project advocates interviewed seven bar owners and one general manager of a bar. None were familiar with all aspects of Article 19F and several knew virtually nothing about it. When told that backyard patios were not allowed to have walls, nearly all said that there have to be walls. Nonetheless, only one bar owner was openly opposed to SHS laws, believing that they were harmful to business. Two others expressed support for SHS laws that were applied in a limited way, but most had no opinion either way. Most bar owners said they made little or no money from food and in most cases, claimed that food was only on the premises during charity fundraisers. The bar owners were generally not interested in receiving help to get them into compliance, though one was open to assistance in providing required signage for the backyard.

The advocates decided the most strategic approach would be to first work with DPH to establish guidelines; once guidelines were finalized, DPH would notify bars about how the law was clarified and help them to correct problem areas. Armed with the abundance of data and evidence they had compiled, the advocates met with staff from San Francisco DPH Environmental Health (EH) to outline the process they would follow to clarify sections of Article 19F found to be confusing.

EH staff advised them to use the information they had collected to draft recommended guidelines and submit them to EH, which would take the recommendations and consider them along with others that EH would develop. When final recommendations were agreed upon, EH would submit them to the Air Quality Research and Planning manager and the Director of Environmental Health for initial approval. This would be followed by a period of public comment, including an early period during which written comments would be accepted and a later period where community meetings would be held. Then, there would be a period when any necessary revisions would be made by EH and/or by SFDPH management, and possibly the Mayor's Office, before final approval was given and the guidelines implemented.

At a later meeting, the EH staff person shared a specific timeline for the process. The timeline began with draft guidelines being prepared by March 2012; EH review in April; public comments, revision of guidelines, community meetings from May through August; further revisions and reviews through the end of 2012, and final guidelines ready to be implemented in March 2013. EH also suggested that in the late fall, when DPH and the Mayor's Office would review and comment on the guidelines, the advocates should plan to generate letters and phone

calls for the public comment period, recruit as many people as possible to speak at community meetings, and gather support from community leaders and organizations.

The meetings with EH had given advocates a basic understanding of the process along with ideas about which decision makers FFT and the community might need to pressure for support of the proposed guidelines and/or move the process along. The advocates created a comprehensive educational packet containing summaries of the data and information they had collected along with their proposed model policy. Stakeholders were identified and the advocates began an outreach process to generate support for the action.

The advocates had conversations with a number of elected officials, including members of the Board of Supervisors and state legislators representing San Francisco. While the officials were generally supportive of the concept, none were willing to take a concrete action, from signing a letter of support, to meeting with bar owners, or writing a supportive op ed piece for the newspaper. Their reasons for being non-committal varied from a state legislator not wanting to interfere in city law or step “on other people’s toes,” to not having time to meet with bar owners, and having too many other issues on their plate. Even the one state legislator who initially told the advocates he would be a champion of the action mysteriously reversed his position.

After the advocates presented their draft guidelines to EH it appeared there was some miscommunication about the guidelines process; as of this writing, the guidelines are still pending feedback from Environmental Health. By now, the advocates were feeling disappointed about the process and tried a new approach which involved balancing trying to work both within and outside the system. *“It almost feels like we’re being getting the runaround,”* said one. Feeling that they had to do something, the advocates visited bar owners as a concerned community organization. *“We went out and told bar owners what we think the law means and asked them if they could do it. We’ve had some positive responses, but without real enforcement from the City, the vast majority of these places will continue to do what they are doing.”*

Gathering support proved to be very difficult. Only two LGBT or Castro area groups publicly supported the project. And while some members of other groups expressed support for the goals of FFT, they decided that it was not their business to make recommendations about how the law should be enforced. Nor, for the same reason, did any LGBT or Castro area elected officials endorse the proposal, feeling it was inappropriate for them to tell DPH how to do its job. A highlight, however, was the more than 2,100 signatures FFT advocates collected at 2012 Pride urging Environmental Health to not allow smoking under ceilings on bar patios.

But the project was in a bind. The end of the year was approaching and time was running out for the advocates as the project’s end date was just months away. *“We have to be very careful when we go out and talk about this,”* said the project coordinator. *“We were on a radio show and talked about our own personal issues of secondhand smoke and the law, but at that point we had to dodge the issue of city enforcement. We had some good media from one of the local papers, but they had to hold off on the article because they never heard back from DPH on the research they asked about. Now I can’t contact them and pressure them to get the article in print because it will talk about enforcement and that will antagonize EH. We can’t do a press release or anything except talk to bar owners and do careful outreach. Our hands are tied.”*

TFP staff advised the advocates to wait a few weeks in the hope that EH would decide to move forward with the guidelines. Meanwhile, the holiday season, when everything really slows down, was looming. Although some of the bars the advocates had approached made some changes, the advocates realized that this piecemeal approach lacked the clout of City inspectors from Environmental Health coming out to check on compliance and enforce SHS laws. As the advocates waited, the urgency of not being able to get their information out to the media and the public before the project ended grew.

By mid-December, the lack of movement from Environmental Health, the promise of the few bar owners willing to consider taking unilateral action, and determination to not let the project end before releasing their research to the public prompted the advocates to begin a direct outreach campaign to bar owners to get voluntarily commitments to take specific actions reducing the impact of secondhand smoke. The advocates hoped at least one bar owner would sign a voluntary resolution, which would give them a legitimate reason to hold a press conference and thank the bar owner(s) and also provide a platform to promote the research. The advocates believed that this approach would not alienate EH or jeopardize the guidelines process from moving forward.

This experience yielded many lessons learned that are useful to share with other groups wanting to undertake similar work.

First, don't expect city or county government to move as fast as you might want it to. Policy change takes time under the best of circumstances. Consider other options. For example, instead of working on enforcement, the project could have worked to get a new law passed saying it is illegal to smoke in the back patio areas of bars, however other groups were already working on the issue. Further, the biggest champion of secondhand smoke issues on the Board of Supervisors might not have had time for the patio issue, along with the others he was sponsoring; thus, this strategy might not have moved forward any better and FFT might have had difficulty getting champions to sponsor it.

Excerpts from “A Resolution for Our Community’s Health”

As an owner (or owners) of a bar or club in San Francisco, I/we provide valuable social gathering space for an LGBT community that continues to bear the burden of the effects of homophobia, which include a higher smoking rate...

...I (We) resolve to reduce the impact of secondhand smoke on our customers and staff, and contribute to an environment that will help inspire the 70% of smokers who want to quit to accomplish that goal, by taking the following steps by the end of 2013 (check all that apply):

Ensuring that all portions of outdoor areas which have permanent or temporary overhead covers are smoke-free at all times.

Clearly marking the boundaries of a smoke-free area (on side or rear patios) which extends at least 10 feet from all doors that lead to the bar's interior and from windows that can be opened.

Making sure that all areas where food is prepared or served are smoke-free .

Raising the awareness of our staff as to the importance of maintaining this resolution.

Taking this additional action of our own choice that will demonstrate our commitment to protecting our customers and employees from the dangers of secondhand smoke.

Second, passing the law (Article 19F) is only the first step. Passing a law does not make it real or mean that the culture of the environment will change. The process to change social norms is long and demanding. Ensuring compliance takes constant vigilance, enforcement, education, and raising public awareness.

Third, secondhand smoke enforcement is a complaint driven process. Inspectors visit each bar and restaurant twice a year and might only look at compliance based on the complaints they have received. In San Francisco, inspectors are checking for many different types of violations of the health and safety codes and, depending on the inspector, smoking and secondhand smoke might be at the bottom of the list.

Finally, be sure that the advocates are empowered by the ups and downs of the process. Advocates who are passionate about the work they are doing will learn less and be less motivated if the project dictates what they should do. They need to be able to problem solve and make decisions collectively. During the course of this very frustrating process, the FFT advocates were encouraged to come up with creative and independent ideas about how to proceed – and they did.

How FFT handled the challenges in being able to move forward is a good example about how tenacity and commitment led to creative and nimble ways by which the project shifted gears and tried new approaches. While the project, due to circumstances entirely beyond its control, was unable to get guidelines through Environmental Health that would have clarified existing policy, the advocates did acknowledge and celebrate a number of achievements that occurred over the life of the project.

Some were serendipitous. For example, early in the process when the advocates were compiling a list of bars to study, they came across an ad for an occasional club night in one of the gay bar magazines that openly publicized having an indoor smoking lounge – a clear violation of existing law. The advocates notified the Tobacco Free Project about the violation which resulted in the club receiving a letter from the city attorney and the subsequent closing of that room.

On another occasion, two advocates recorded addresses of buildings without “smoke at the curb” signs in the Castro/Market and South of Market area and reported them to TFP who sent out letters and stickers to those addresses, leading to a significant increase in the number of businesses that now have the stickers.

Some gains were also made with some individual bar owners.

- A couple of bars removed portions of their ceilings and one of those bars also pledged to extend the smoke-free area of the patio by an additional five feet and to clearly mark the smoke-free area on the floor.
- One bar posted signs saying that smoking was allowed only at the back fence along with another sign warning about the dangers of secondhand smoke.

Encouraged by these successes, the advocates pondered how to restructure the project’s goals in a way that would allow it to sidestep the guidelines issue and publicize the important research they had conducted. As reported above, the first thing step was to ask owners of patio bars to

voluntarily adopt a set of commitments – similar to the guidelines but less formal – to reduce the impact of secondhand smoke on their customers and staff. Since it was around the New Year, the advocates called it “A Resolution for Our Community’s Health.” **How many bars signed the resolution?**

The advocates then planned a community/press event at an SF LGBT institution, Café Flore, an iconic restaurant and bar where for 40 years people go to for food or just to drink. While Café Flore previously had an outdoor patio that allowed smoking, the owner changed the patio to smoke-free after 19F passed. Even though it wasn’t a voluntary adoption, the advocates felt that what they were asking bars to do was also required by law. The symbolism of Café Flore being smoke-free has a value that most other restaurants would not have in terms of its impact on the LGBT community. After a substantial outreach and publicizing effort, about 50 people, including reporters and photographers from both local LGBT papers, attended the event at 4 pm on a cold rainy Wednesday afternoon in January. Speakers included a gay man with one functioning lung who is unable to tolerate smoky patios, and a representative from the SF Labor Council who talked about the impact of secondhand smoke on the health of workers. In addition, two members of the Board of Supervisors attended the event, along with two members representing San Francisco in the state legislature who delivered proclamations from the City to FFT.

FFT intends to keep the project running on a limited volunteer basis for the time being. It intends to monitor changes the bar owners have made to see if they stick with them, and also will monitor the effectiveness of the changes. FFT might also suggest improvements to the cooperating bar owners that will help enhance awareness. At some future time, FTT will also call 311 (the City’s information and services line) to work on improving compliance at all of the bars, especially the ones that have not made any improvements. FFT also will stay in touch with staff at Environmental Health so that if the guidelines process moves forward the project will be in a position to generate support for its own proposed guidelines.

Contact person

Brian Davis

brian@fftsf.org

<http://www.fftsf.org/>

Project-related tools/products available

- Education packet (the data, graphic presentations make it a good tool for people working on SHS legislation especially in the LGBT community)
- Information about the usefulness of getting access to measure air quality locally (which might be available through the health department)