



A Preliminary Report

Bloomington's Ordinance on Regulating Smoking

Presented to the City Council
August 15, 2005

Preliminary Report - Bloomington's Ordinance on Regulating Smoking

INTRODUCTION

In July 2004, the Bloomington City Council adopted an ordinance that eliminated most of the exemptions in the Minnesota Clean Indoor Air Act prohibiting smoking in public places and workplaces. The intent of the ordinance was to further protect the health, safety, and welfare of Bloomington residents, employees, and visitors from the health risks associated with secondhand smoke. Bloomington was the first local government in the seven-county metropolitan area to institute a comprehensive ban on smoking since the State of Minnesota enacted the landmark Clean Indoor Air Act in 1975.

With its passage, the City committed to a review of the impact of the ordinance after it went into effect to determine whether there would be any disparate economic impact on Bloomington businesses. Subsequent to the passage of the Bloomington ordinance, Hennepin County passed an ordinance that also prohibited smoking in all food and beverage establishments including restaurants, bars, and private clubs. Cities in Hennepin County are able to adopt ordinances which are more stringent but not less restrictive than the County ordinance. Based upon questions regarding the Hennepin County ordinance, the Bloomington City Attorney clarified that if Bloomington had not adopted an ordinance or if Bloomington's ordinance were repealed or invalidated, the Hennepin County ordinance would still apply and be enforced by City staff (see Appendix A).

Implementation of the ordinance occurred in two phases to give some businesses additional time to prepare. On September 1, 2004, the Bloomington ordinance went into effect for most workplaces, including all food establishments that were not licensed to serve liquor or 3.2 beer or to conduct charitable gambling. For food establishments licensed to serve liquor or 3.2 beer and establishments with charitable gambling permits and licenses, the ordinance took effect on March 31, 2005.

After hearing public comments from owners, members, and staff of some of the affected establishments at the June 6, 2005, Council meeting, the Council requested a three-month status report on the effects of the ordinance on licensed establishments to be presented at their August 15 meeting. Licensed establishments may have three different sources of revenue: food sales, liquor sales, and/or charitable gaming. In preparing this report, City staff reviewed the data that was available for April, May, and June 2005 and followed up with analysis of the data.

CONTEXT

As of June 6, 2005, there were 11 states representing 36% of the United States population with laws in effect that require 100% smoke-free workplaces and/or restaurants and/or bars; 243 municipalities have local laws requiring 100% smoke-free restaurants; and 181 municipalities have local laws requiring 100% smoke-free bars (see Appendix B).¹ Currently in Minnesota,

there are four counties and seven cities covering 38% of the population with smoke-free restaurant and bar laws.²

Of those cities with ordinances, many have completed a comprehensive evaluation of the economic effects of their ordinances (e.g., New York City, Boston, and El Paso). Several key study components are essential in creating a complete picture of the impact of a new smoking ban ordinance. The most basic economic impact studies review and analyze bar and restaurant tax receipts, employment trends, and business openings and closings. The overall business climate is considered in several of the studies, including the effects of 9-11-2001. One of the challenges in conducting an economic impact study is that there are other factors that may affect revenues, such as road construction, labor disputes, temporary closures for remodeling, or other issues. It is difficult to ascertain the effect of these other factors. Studies often include business compliance data, public opinion polls, and, if available, workplace air quality survey results.

It is also important to take into account business cycles. Most rigorous economic impact studies also look at historical data to determine if there are seasonal fluctuations or other socio-economic trends occurring. Additionally, it is important to review annual data because certain important economic data sets are only available on a yearly basis.

There are factors that need to be considered when reviewing data over a time shorter than one year. Cities, counties, and states that have adopted ordinances or statutes have found that initial economic results are mixed. After the first few months of implementation some have experienced gains, some no change, and others overall losses of 5-10%. Most of those experiencing loss in the adjustment period of an ordinance rebound in the longer term. New York City saw a gain of 10,600 hospitality jobs and 234 active liquor licenses in the year following the adoption of the smoking ban. The results from New York City are not unique; similar results have been found elsewhere.³ In Lexington, Kentucky, bars and restaurants have remained stable since the city's comprehensive law, which made restaurants, bars, pool halls, and bingo parlors 100% smoke-free, went into effect on April 27, 2004. California's bar and restaurant industry has added 200,500 employees since the 1995 law took effect.⁴ The state of Delaware has seen an increase of 32 licenses for restaurants, bars, and taprooms and has gained 200 employees in the hospitality industry (see Appendix C).⁴ These studies also took into consideration the normal business cycle for the hospitality industry.

Other industry studies have shown there are additional cost savings for smoke-free business resulting from lower employee absenteeism, increased productivity, and lower insurance rates and maintenance costs. According to the *Journal of Occupational and Environmental Medicine*, employees who smoke cost employers approximately \$27 billion in lost productivity.⁵ The U.S. Centers for Disease Control and Prevention (CDC) puts a \$3,391 price tag on each employee who smokes: \$1,760 in lost productivity and \$1,623 in excess medical expenditures. It is estimated that smoke-free restaurants can save \$190 per 1000 square feet in cleaning and maintenance fees.⁶

Bloomington Restaurant Profile

There are approximately 250 licensed food establishments in Bloomington, including restaurants with and with and without liquor licenses, coffee shops, food court vendors, private clubs,

bowling alleys, and fast food places. Of these, 102 are restaurants without liquor service, 95 of which had voluntarily gone smoke-free over the past ten years prior to the ordinance. The remaining 65 establishments that still allowed smoking had to implement a smoking ban on March 31, 2005.

Bloomington Adult Smokers

According to the 2002 SHAPE survey, 83% of adults in Bloomington are non-smokers.⁷ In general the 17% of adults who smoke tend to be younger in age and have lower levels of income and education.

DATA SUMMARY

Financial Summary:

The City of Bloomington’s largest industry is hospitality. Bloomington has over 700 hotel/motel rooms available, more than Minneapolis and St. Paul combined. The City also has approximately 250 restaurants of which 64 serve liquor, wine, and beer. Bloomington is unique in that it collects lodging and liquor sales tax directly versus other municipalities that have the State collect the taxes. All liquor tax receipts go to the Port Authority for Mall of America and related purposes. There are 12 locations within the City that provide charitable gambling. The attached Graph A demonstrates the magnitude of hospitality activities within the City.

Lodging Tax Revenues -

Reviewed were the lodging tax revenues for April through June from 2001 through 2005 to determine if the smoking ban had a significant impact on this industry. Graph B reflects no visible impact of the smoking ban and the industry, as a whole, continues to rebound since 2003.

Liquor Tax Revenues -

Only the 65 locations that are required to provide liquor sales tax receipts to the City are represented within this financial analysis. An additional requirement for a fair comparison was that the business had to be in operation during the entire period under review, or, if the business closed, another business replaced the closed business within a relatively short period of time. Liquor tax receipts were analyzed from January 2001 through June 2005. Several different graphs were created to determine if there were any significant trends established during April through June.

Table A: Growth in Total Liquor Taxes Collected

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Annual (Graph C)	-0.28%	0.71%	-1.71%	-0.62%	
6 Month (Graph D) (January – June)	5.10	1.59	-3.83	-1.98	-5.09%
3 Month (Graph E) (April – June)	12.58	-5.67	-1.67	0.72	-8.38

The annual liquor revenues collected from 2001, 2002, 2003, and 2004 indicate that liquor taxes have been slightly declining over this four-year period. During the first 6 months of each year (2001-2005), total liquor revenues have been declining steadily over the last three years. During the three-month time frame of April, May, and June from 2001 through 2005, liquor sales have been declining.

To further assist with reviewing the financial information to determine if a particular type of business was more or less affected by the smoking ban, businesses were categorized into the following: Chains, Ethnic, Private Clubs, Sports Bars, and Hotel/Upscale. It is important to note that individual establishments will not be specifically identified, as all liquor sales tax return information is confidential. The following tables reflect the percentage changes annually, at 6-month and 3-month intervals.

Table B: Liquor Sales Tax Collections by Category - Annual

	2000/2001	2001/2002	2002/2003	2003/2004
Chains	2.39%	2.52%	-1.62%	2.43%
Ethnic	-0.08	3.77	-4.19	1.42
Hotel/Upscale	-3.36	-6.89	-3.74	9.15
Private Clubs	-1.56	-1.36	-0.10	3.49
Sports Bars	0.33	7.18	-3.91	-10.90

This table looks at each of the categories on an annual basis for 2001 through 2004. The chain establishments, on average, have generally shown consistent growth. Ethnic establishments do not show a consistent pattern, one year up, the next year down. The hotel and upscale and private club establishments were showing a consistent decrease each year until 2004. Sports bars, over the last two years, have had a significant decrease in sales.

Table C: Liquor Sales Tax Collection By Category – 6 Months (Jan – June)

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Chains	2.08%	4.43%	-2.02%	1.78%	-2.79%
Ethnic	-.39	4.31	-5.20	-2.33	9.79
Hotel/Upscale	-.17	-10.24	-4.81	9.55	1.01
Private Clubs	.45	-0.25	-1.10	2.77	-5.67
Sports Bars	17.37	10.94	-8.76	-13.69	-16.78

All of the categories were consistent with the pattern established with the annual averages from 2001 to 2004 except for ethnic categories in 2004, which had a decrease for the first 6 months of 2004 but ended positively. Sports bars have continued their downward trend since 2003.

Table D: Liquor Sales Collection By Category – 3 Months (April-June)

	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005
Chains	4.04%	3.30%	-10.86%	14.51%	-6.60%
Ethnic	-2.60	2.51	-6.61	1.21	5.45
Hotel/Upscale	3.52	-13.72	-4.93	10.33	.31
Private Clubs	4.57	-4.13	-2.43	3.90	-9.05
Sports Bars	45.93	-8.06	9.67	-18.91	-23.64

The three-month average information shows considerable fluctuation within all categories. However, Sports bars continue to decline in sales. It is very difficult to determine the magnitude of smoking ban effects with the volatility reflected in the table. The following tables E and F emphasizes this volatility:

Table E: Range of Liquor Sales Tax Collections from 2004 to 2005 -(6 months)

	2004 6 month	2004 Range	2005 6 month	2005 Range
Chains	1.78%	-25.11% to +45.25%	-2.79%	-17.63% to +31.57%
Ethnic	-2.33	-18.14% to +39.15%	9.79	-30.90% to +22.31%
Hotel/Upscale	9.55	-26.04% to +23.94%	1.01	-15.22% to +41.13%
Private Clubs	2.77	-18.22% to 28.50%	-5.67	-22.61% to +8.91%
Sports Bars	-13.69	-27.65% to 11.24%	-16.78	-29.74% to +17.09%

Table F: Range of Liquor Sales Tax Collections from 2004 to 2005 (3 months)

	2004 3 month	2004 Range	2005 3 month	2005 Range
Chains	14.51%	-16.53% to +33.98%	-6.60%	-25.56% to +13.48%
Ethnic	1.21	-42.83% to +95.28%	5.45	-39.28% to +10.67%
Hotel/Upscale	10.33	-26.37% to +36.94%	.31	-14.84% to +34.63%
Private Clubs	3.90	-27.13% to +52.05%	-9.05	-26.80% to +15.75%
Sports Bars	-18.91	-38.68% to +14.45%	-23.64	-39.52% to +4.40%

This table demonstrates within the “Range” columns that even though a “Category” may move upwards or downwards over time, the establishments within the category are not necessarily following that same pattern.

Food Sale Information -

In July 2005 the current 65 establishments that submit liquor sales tax were requested to provide “Food Sales” information from January 2004 through June 2005. Approximately 52 percent (33) responded to the survey. After reviewing this limited information, food sales for the first six months of 2005 compared favorably to the first six months of 2004 except for private clubs, which had a dip in April 2005 food sales but were back to 2004 levels by June. Based on this very limited analysis, there is no indication that food sales have been impacted

positively or negatively by the smoking ban for licensed establishments (see Graph F). As noted above, there are approximately 250 restaurant type establishments within the City. The comparison was limited to the 33 survey respondents that volunteered their food sale information. The City would not normally receive these food sale figures.

In summary, the lodging sales tax returns reflected no significant impact from the smoking ban. The liquor sales tax returns detailed on the 6-month graph (Graph D) reflect a downward trend in liquor sales since 2002. For the first 6 months of 2005, there has been approximately a 5 percent drop in liquor tax revenues. There is no conclusive evidence at this time that this decrease in revenue for 2005 can solely be attributed to the smoking ban. Finally, there were no indications within the limited food survey that the smoking ban has affected food sales in on-sale establishments. The food sales at non-licensed establishments are unknown.

Charitable Gambling Summary:

Information regarding Lawful Charitable Gambling was obtained from reports of the Minnesota Gambling Control Board. No data is available comparing the rate of participation in charitable gambling of smokers vs. non-smokers. There has been a statewide decline since 2001 trend in Lawful Charitable Gambling gross receipts as indicated by the graph. Net receipts available for lawful purpose expenditures are the gross receipts less prizes. Net receipts in 2004 were 18% of gross receipts in the state. Statewide net receipts were distributed as follows: 49% for expenses, 29% for charitable contributions, and 22% for State taxes.

Bloomington organizations conducting Lawful Charitable Gambling have experienced a declining trend in gross receipts in the months the smoking ordinance has been in effect as indicated by the comparison graph with three months of data. Bloomington ordinance requires 30% of the local organizations' expenditures on lawful purposes be "conducted or located within the City of Bloomington or any municipality contiguous to the City of Bloomington." The graph shows this breakout in comparison to the net receipts over the last four years.

Complaints:

Staff has been tracking complaints regarding violations of the ordinance and to this point there have been very few. Primarily, the complaints received have been about smoking at doors of businesses, a violation of the 25-foot rule (six complaints to date). Staff has worked with businesses to comply and adapt to this rule. To this point there have been no complaints concerning violations of smoking inside restaurants and bars. The cost to the City of enforcing the ordinance has been minimal apart from pending litigation.

BLOOMINGTON PUBLIC OPINION SURVEY OF SMOKE-FREE ORDINANCE

The first survey was conducted in July 2004 before the smoke-free ordinance was passed and followed by a second survey in June 2005. A series of surveys to measure public opinion on recently implemented smoke-free ordinances in Hennepin and Beltrami counties was conducted by the Mellman Group of Washington, D.C.

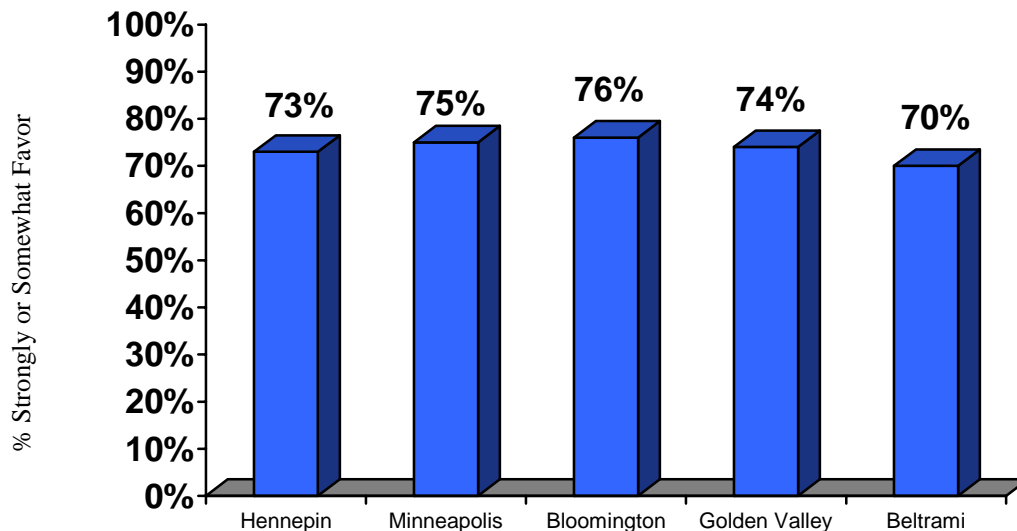
The Hennepin County survey was conducted May 31-June 5, 2005, interviewing a sample of 400 registered voters derived from the voter file maintained by the Secretary of State. In addition, over-sampling occurred in Minneapolis, Bloomington, and Golden Valley to measure public opinion on their specific local ordinances. These over samples resulted in interviews with 406 registered voters in Minneapolis, 403 registered voters in Bloomington, and 406 registered voters in Golden Valley, each of which were weighted down in the county-wide data to reflect their actual proportion of total county registered voters. When necessary, the data from each of these communities were weighted slightly to insure that each sample's demographics were consistent with the known demographic characteristics of the voter in each community.

The margin of error for the Hennepin County survey is ± 4.0 percent at a 95 percent confidence level. The margin of error for the surveys in Minneapolis, Golden Valley, and Bloomington is ± 4.9 percent at a 95 percent confidence level.

Key Survey Findings for Bloomington:

- Residents overwhelmingly favor indoor smoke-free policies. (76%)
- Residents think smoke-free policies will reduce secondhand smoke exposure. (81%)
- Residents consider secondhand smoke a health hazard. (82%)
- Residents go out to restaurants and bars as much or more since the implementation of smoke-free ordinances. (89%)
- Residents are not making special trips to communities that allow smoking in restaurants or bars. (85%)

Residents Overwhelmingly Favor Indoor Smoke-Free Policies



The full survey results are available at www.mpaat.org.

CONCLUSIONS

1. Statewide uniformity would level the playing field.
2. Few complaints and minimal enforcement cost.
3. Rebound in lodging tax receipts since 2003.
4. A four-year decline in liquor sales locally for the months April-June.
5. Limited food sales survey shows no impact.
6. Since 2001, downward trend in Charitable Gambling.
7. A majority in Bloomington supports the ordinance, 68% in 2004 and 76% in favor in 2005.
8. Overall, changes in revenue from 2004 to 2005 may be occurring for a number of reasons. It is difficult to discern the extent to which the smoking ordinance contributes.

OPTIONS FOR CITY COUNCIL

1. Research
 - Review six months of data
 - Review nine months of data
 - Complete a comprehensive study with a full year of data
2. Policy Choices
 - Retain the current Bloomington ordinance
 - Modify the ordinance for bars and restaurants to match Hennepin County
3. Action
 - Advocate for a statewide ban
 - Continue ongoing study
 - Establish a time for a special public hearing
 - Combination of options

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