Policy Development Efforts in Kansas to Support Public Health

Natasha Frost, Staff Attorney
August 22, 2016
Objectives

• Understanding how to use an equity lens to positively impact low-income communities, communities of color and the rural/urban dichotomy;
• Using the drafting effective policy tool to develop written documents; and
• Identifying policy options available to impact healthy food, active transportation and tobacco control, including state laws impacting local efforts.
The Public Health Law Center
What does the Public Health Law Center do?

We help Drue eat strawberries and kale!
Legal Technical Assistance

- Legal Research
- Policy Development
- Publications
- Trainings
- Direct Representation
- Lobby
Our Role in Kansas

2013 – 2014
Listened to Communities/Identified Needs

2014 – 2015
Respond to questions/Develop Resources

2015 – 2017
Translating and updating resources, identifying gaps and exploring new partnerships and opportunities
Kansas Work
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Mary Marrow – mary.marrow@mitchellhamline.edu
http://www.publichealthlawcenter.org/kansas
Public Health Definition

Public Health:

“What we as a society do collectively to assure the conditions for people to be healthy.”

“Fulfilling society’s interest in assuring conditions in which people can be healthy.”
Public health law

Law and policies can be used to **solve** public health challenges
Why PSE change?

- Major health problems will not be solved solely by individual actions
- Health problems are influenced by societal policies and environments that promote unhealthy behaviors or fail to foster healthier choices
- Chronic disease prevention requires an “upstream” approach that improves the environments where we live, work, learn, play, and receive health care
Policy

Any **written** plan or course of action designed to **influence** and determine decisions
Policy, systems, environmental change

Practice/Individual Behavior

Programs

Policy, systems, environmental change

Practice/Individual Behavior

Programs
What is a healthy beverage?
No written policy

Fruit juice, water, milk (dairy and other types)

Sports drinks are healthy. They help with rehydration!

Any beverage without added sugars, including diet pop
Written policy

Beverage Standards:
100% of beverages must be one or a combination of the following:
- Water, including carbonated water (no added caloric sweeteners);
- Coffee or tea with no added caloric sweeteners (if condiments are provided, sugars and sugar substitutes may be provided and milk/cream products, such as whole or 2% milk, that have less fat than cream);
- Fat-free or 1% low-fat dairy milk or calcium- and vitamin-D-fortified soymilk with less than 200 calories per container;
- 100% fruit juice or fruit juice combined with water or carbonated water (limited to a maximum of 12-ounce container; no added caloric sweeteners);
- 100% vegetable juice (limited to a maximum of 12-ounce container, no added caloric sweeteners, and ≤ 200 milligrams of sodium per container); and
- Low-calorie beverages that are ≤ 40 calories per container.
What is a program?

- One-time event
- Focus on individual behavior
- Not written down
- Not enforceable to general community
Understanding PSE

- Envisioning how policy complements programmatic work
- Identifying policy’s power for long-term change
- Being comfortable with uncertainty
- Recognizing potential unintended consequences and applications of policy through an equity framework
Equitable Engagement

Food System Stakeholders

- Consumers
- Farmers
- City & state officials
- Community & faith-based organizations
- Culinary professionals
- Food distributors
- Health professionals
- Hunger relief representative
- Economic development representative
- Food insecurity representative
- Grocery stores & restaurants
- Schools & institutions
- Agricultural organizations

Factors:
- Immigrant/refugee
- Political affiliation
- Gender
- Low-income
- Age (senior, youth)
- Individuals with disabilities
- Tribal membership
- Culture
- Religious affiliation

Source: Modified from Douglas County Food Policy Council
What is health?
What creates health?
Health is socially produced

- Genes & Biology, 10%
- Physical Environment, 10%
- Clinical Care, 10%
- Health Behaviours, 30%
- Social & Economic Factors, 40%

Adapted from John Weeks, Huffington Post (2016).
Implicit Bias and Public Policy

- “Most policies are *facially* neutral (race silent) but not *racially* neutral—they have negative or positive racial impacts.
- Negative racial impacts may or may not have been intentional. Positive racial impacts often require intentionality.
- When racial impacts are not consciously considered during the lawmaking/decision-making process, there is more likelihood that negative racial impacts will result-- implicit bias is the default.”

- Race Forward

Unintended Impacts with Towing Policy

“The Department of Regulatory Services has used the [racial equity] assessment to figure out why snow-emergency towing hit car owners in certain neighborhoods [in Minneapolis] harder than others. In doing so, they realized that drivers in more-dense and lower-income areas are less likely to have garages or driveways to get cars off snow routes. Some grace factor is in order for those areas, especially when storms are not well forecast.”
Minneapolis Councilmember Cam Gordon wanted to improve the city’s existing staple food ordinance to include breads, cereals, and proteins. He met with small grocers that serve minority communities and realized that the proposal requirements could be so onerous that these grocers would go out of business. He found a distributor who could work with the small grocers and connected them with urban farmers to help address some of the potential disproportionate negative impacts on small grocers.
Child and Adult Care Food Program

Breakfast:

Lunch:

Snack:
(2 of the 4 Groups)

Fruit or Vegetable  Milk  Bread or Grains  Protein
Choice Points

• “Choice points are decision-making opportunities that influence outcomes.
• The cumulative impacts of many small choices can be as significant as the impacts of big decisions.
• When we’re conscious of choice points and the related impacts, we’re less likely to replicate implicit bias and the status quo, and we open new possibilities for equitable change.”

- Race Forward

Using Choice Points to Advance Equity and Inclusion

“1. Where are the decision-making points that affect outcomes?
2. What decisions/actions may be reinforcing the status quo, implicit bias and current inequities?
3. What alternative action options could produce different outcomes?
4. Which action will best advance equity and inclusion?
5. What reminders, supports and accountability systems can be structured into routine practices to keep equity as a high priority?”

- Race Forward

# Institutionalizing Equity

<table>
<thead>
<tr>
<th>Implicit Bias</th>
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<tbody>
<tr>
<td>Unaware of choice points</td>
<td>Builds in decision-making guides that consider equity</td>
</tr>
<tr>
<td>Exclusive of stakeholders</td>
<td>Fosters active engagement and empowerment of diverse stakeholders</td>
</tr>
<tr>
<td>Not attentive to race, gender, income, and other</td>
<td>Gives distinct, specific, and sufficient attention to key disparities/inequities</td>
</tr>
<tr>
<td>inequities</td>
<td></td>
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<tr>
<td>Ignores barriers to access</td>
<td>Supports and implements strategies to remove barriers</td>
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<tr>
<td>Does not consider racial or other disparate impacts</td>
<td>Systematically analyzes potential impacts on disadvantaged groups</td>
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</table>

Adapted from Race Forward

Applying Choice Points to Policies

Federal | State | Local | Internal Policy/ Rules

[Images of fruits and vegetables]
Drafting Effective Policies

Policy change is one way to support community efforts to increase access to healthy food and support active living efforts. But not all policies have the same force and effect. Written policies are more likely to weather leadership or management changes, and promote consistent implementation and enforcement. Written policies can help everyone understand both what is expected of them and how the policy will be applied across a community, organization or department, which in turn can help promote a sense of fairness. Policies that are clearly understood and supported by community members are more likely to be self-enforcing, requiring less resources to monitor. This fact sheet provides checklists and tools to help readers understand the policy drafting process, and how to draft well-written policies that will help them achieve their public health goals.

Types of Policies

- **Laws and regulations**: These are policies passed by elected officials or government agencies that influence behavior. They include constitutions, charters, statutes, codes, ordinances, resolutions, orders, agency regulations, and proclamations.

- **Guidance documents**: These are policies created by governmental bodies that interpret laws and regulations.

- **Organizational policies**: These are formal policies adopted by businesses, organizations, and government entities that address how they operate, and which may impact their employees, members, volunteers, or visitors on their property.

### WHAT IS POLICY?

Any written plan or course of action designed to influence and determine decisions.

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**Drafting Effective Policies Checklist**

**Findings**

- Are the findings evidence-based?
- Do the findings support the purpose of the policy?
- Do the findings anticipate challenges?
- How was the information obtained? Were diverse stakeholders engaged, and is their involvement explained?
- Have the data used to arrive at these conclusions been disaggregated by race, class, gender, age, etc?

**Purpose**

- The purpose is a statement that explains the goal(s) of the policy. Think about:
  - Does the purpose explain how this policy can reduce disparities and expand opportunity?

**Definitions**

- The definitions are detailed explanations of the key terms in the policy. Think about:
  - Are all the key terms defined?
  - Are any unnecessary terms defined?
  - Are the definitions written broadly enough to encompass new or emerging concepts or products without being overly broad?

**Main Policy Provisions**

- The main policy provisions state the prohibitions and/or requirements of the policy and identify the parties to whom the provisions apply. Think about:
  - Are all the requirements and prohibitions reasonable?
  - Do the provisions address the purpose?
  - Are the provisions consistent with other policies and laws?
  - Are the provisions clearly stated?
  - Is it clear to whom the policy applies?
  - Does the policy include prohibitions regarding reducing disparities and expanding opportunity?

**Exceptions or Exemptions**

- This section contains any exempptions or exceptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy. Think about:
  - Are the exemptions or exempions limited and written as narrowly as possible?
  - Will any of these exemptions or exempions have a disparate impact?

**Enforcement**

- The enforcement section identifies the parties responsible for enforcement, outlines the enforcement procedures, any penalties or fines that may be imposed, and any appeal process. Think about:
  - Could any of these sanctions disproportionately impact certain populations or factions?
  - How does the enforcement section ensure all populations will be informed and engaged in the policy?

**Implementation**

- The implementation section states the effective date for the policy and the steps to disseminate and publicize the policy. Think about:
  - How will stakeholders be engaged in the evaluation process?

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This fact sheet is funded by the Kansas Health Foundation to increase the availability of healthy foods and support active living in Kansas.
What is an effective policy?

- Easy to understand and follow
- Easy to enforce
- Accomplishes goals
- Includes periodic evaluation
Drafting Effective Public Health Policies

Do’s

✓ be clear & concise
✓ be consistent
✓ be specific
✓ be practical
Do: Be Clear and Concise

- Use definitions appropriately
- Eliminate unnecessary words
- Keep language simple
- Be precise
Do: Be Consistent

- Focus on policy objectives
- Policy language
- Internal & external
Do: Be Specific
Do: Be Practical and Reasonable

Ability to achieve purpose

- Cost
- Effective dates
- Ability to follow policy
- Unintended consequences
Drafting Effective Public Health Policies

DON’Ts

- don’t forget your homework
- don’t draft by “Xerox®”
- don’t draft in isolation
- don’t misuse exemptions
Don’t Forget Your Homework

- Involve diverse stakeholders
- Review sample policies
- Involve legal assistance
- Identify deal breakers
- Anticipate challenges and unintended consequences
Don’t Forget Your Homework

Anticipate Challenges

- Choice Points
- Political
- Bureaucratic
- Legal
Don’t simply do what’s been done before – it may not work for you.
Don’t Draft in Isolation
Don’t Draft in Isolation

You are not alone

- Stakeholders
- Legal assistance
- Other grantees

Your policy is not an island

- Existing laws & policies
- Local, state and national trends
- Institutionalizing equity
Don’t Overuse Exemptions
Don’t Overuse Exemptions

- Weaken objectives
- Make interpretation, implementation & enforcement difficult
- Inspire challenges
- Promote inequities
## In Review

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Creating Your Vision
Key Concepts to Keep in Mind

- What aspect of the system can you impact?
- What policies and/or strategies do you want to pursue?
- What are possible obstacles?
- What are the tools available to help?
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http://www.publichealthealthlawcenter.org/kansas
The Kansas Health Foundation is a private philanthropy dedicated to improving the health of all Kansans. The Foundation is focused on preventing chronic disease and reducing health disparities through policy and systems change, leadership development, providing objective information regarding health, and building community capacity to address health issues.

The Public Health Law Center provides a range of legal technical assistance for the Foundation, its grantees and health partners to support progress toward healthy behaviors goals, including increasing physical activity, improving nutrition and reducing tobacco use.

The Public Health Law Center will focus its efforts on three large Foundation initiatives that are focused on policy and systems changes: the Healthy Communities Initiative, the Statewide Partnerships for a Healthier Kansas initiative and the Tobacco Free Kansas Coalition. The Public Health Law Center is also supporting other Foundation initiatives and is working with Foundation partners to promote health policy objectives in Kansas.

As part of this work, the Public Health Law Center will develop a series of Kansas-specific resources and trainings, as well as providing individualized legal technical assistance.

For more information, please contact Mary Marnew (mary.marnew@mitchellhamline.edu), Natasha Prost (natasha.prost@mitchellhamline.edu), or Julia Kalsdon Ackl (julia.ackl@mitchellhamline.edu).

Drafting Effective Policies

This resource outlines different steps to draft an effective policy. It was developed specifically for ongoing Kansas efforts to improve the food and physical activity environment. The tool is meant to be used in conjunction with technical assistance, including that provided by the Public Health Law Center.

Learn More

Healthy Food Resources

Increasing access to healthy food is emerging as a priority in Kansas as local governments and communities are taking action to address food insecurity, support local producers, and improve healthier food and beverage options. These resources provide an overview of Kansas laws that support access to healthy and affordable local food and influence initiatives that provide healthier food environments.

Learn More

Farm and Food Local Taskforce Resources

Creating a food council through resolution is a powerful tool that a local government can utilize to interact with the community in policymaking and seek guidance on complex issues. Food councils are becoming more commonly used and have proven to be an effective process for implementing and executing state and local food policies. No food council is set up or run exactly the same; each one can be adapted to the specific needs of each community. The Public Health Law Center and its partners have developed a series of resources to support the creation and implementation of food councils in Kansas.

Learn More
Farmers' Market Resources
Interest in farmers' markets is growing across Kansas, with the number of these markets increasing more than four-fold in the past two decades. The growth of farmers' markets is closely tied to community efforts to support local producers (sources of fresh, local, and healthy foods) and grow local economies.
Learn More

Bicycling and Walking Resources
Kansas communities are taking action to promote health, prosperity, and economic vitality by increasing physical activity through bicycling and walking. These resources provide an overview of laws and policies impacting bicycling and walking to support these efforts.
Learn More

Child Care Resources
The Public Health Law Center has developed a series of resources designed to inform and support Kansas efforts to outflank child care settings that promote healthy eating, positive exercise habits, reduced screen time, and support tobacco-free environments.
Learn More

Kansas Rules and Regulations Resources
State rules and regulations govern many aspects of our lives, including food safety, nutrition, and active play requirements in the child care setting. Accessibility of clean water, governance of land, and training standards for teachers and nurses. Understanding how rules and regulations operate is critical for Kansas who wish to improve access to healthy food and physical activity.
Learn More

Kansas Local Government Resources
Local governments play a significant role in establishing local policy initiatives to ensure that community members have access to healthy local food and a viable transportation and recreation system that supports walking and bicycling. This collection of fact sheets highlights the different types of policies local governments use to increase access to local healthy foods, support the growth of local economies, and encourage walking, bicycling, and other forms of physical activity in Kansas.
Learn More

What is Legal Technical Assistance?
The Public Health Law Center provides specialized assistance to promote healthy eating and physical activity policies for all settings where we live, work, study, shop, and play. This resource outlines how we can assist with legal research and analysis, educational publications and resources, policy drafting assistance, trainings, and litigation support.
Learn More
Healthy Food Resources

- Kansas' Government Control of Local Food Policies Law
- Food Donation Liability in Kansas
- Healthy Vending in Kansas and the Randolph-Sheppard Act
- Federal Calorie Labeling Regulations for Restaurants and Vending Machines
- Policy Options for Local Governments in Kansas: Increasing Access to Healthy Food
- Food and Beverage Pledges for Hospitals and Healthcare Systems

Available at: http://www.publichealthlawcenter.org/resources/kansas-healthy-food-resources
Healthy Food Resources

- Resolutions
- Land Use Planning
- Zoning
- Property and Natural Resource Management
- Licensing and Use Agreements
- Governmental Bids, Contracts and Wellness Policies
- Unified School District Policies
- Other Policy Options
Healthy Food Resources

Webinar
September 12
10:30-11:30

https://networkforphl.webex.com/networkforphl/onstage/g.php?MTID=e73b18aaf71e913673c85ab7b6b88a
Healthy Vending in Kansas & the Randolph-Sheppard Act

Food vending and concessions operations play a powerful role in shaping community food environments. Snack stations, cafeterias, and vending machines can be found in many locations across Kansas communities, including in city and county buildings, parks, recreation centers, pools, roses, and other places. All too often, however, the food and drink choices available to these outlets are high in calories, added sugars, and salt, and have little nutritional value. For example, a recent survey of vending machines found on public property found that only 3% of the available foods qualified as healthy or healthier (such as vegetables, granola bars, or nuts), and that more than half of vending beverages had high sugar content. One way that federal, state, and local governments can increase community access to healthy foods and beverages is to establish policies that include nutritional standards for the foods that are served or that are sold by food service facilities that they own or manage.

Legally blind vendors are a particularly important group in being less discussions about healthy efforts on government property because of a law called the Randolph-Sheppard Act and the Kansas state law counterparts. These laws require that legally blind vendors be given priority in operating vending machines and other food services on government property. Almost every state, including Kansas, has passed this kind of law. This fact sheet explains how the Randolph-Sheppard Act and its Kansas
Webinar: Increasing Farm to Institution in Kansas
Farm and Food Local Taskforce Resources

Available at: http://publichealthlawcenter.org/resources/kansas-farm-and-local-food-taskforce-resources
Farmers’ Market Resources

- A Guide to Operating Farmers' Markets in Kansas
- State Laws Impacting Farmers’ Markets in Kansas
- Local Government Regulation of Farmers’ Markets in Kansas
- Farmers’ Market Vendor and Market Rules
- Organizational Structure of Kansas Farmers' Markets

Available at: http://www.publichealthlawcenter.org/resources/kansas-farmers-market-resources
Bicycling and Walking Resources

Available at: http://www.publichealthlawcenter.org/resources/kansas-bicycling-and-walking-resources
Bicycling and Walking Resources

- Resolutions
- Local Government Agreements
- Land Use Planning
- Zoning
- Transportation Facility Design and Traffic Control
- Taxing Policies
- Unified School District Policies
- Other Policy Options
Child Care Resources

Available at: http://publichealthlawcenter.org/resources/kansas-child-care-resources

Rules and Regulations

Available at: http://www.publichealthlawcenter.org/resources/kansas-rules-and-regulations
Kansas Local Government Resources

- Why create Land Banks
- Legal Requirements in Kansas
- Sample Land Bank Policy Language

Available at: http://www.publichealthlawcenter.org/resources/kansas-local-government-resources
Our work across the country
The Tobacco Control Legal Consortium (TCLC), a program of the Public Health Law Center, supports tobacco control policy change and the tobacco control movement throughout the United States. This section includes information developed by the Consortium on the most effective legal and policy measures that health leaders and policymakers can use to control the epidemic of tobacco use in the United States and abroad.
Tobacco Retailer Licensing

Using Licensing and Zoning to Regulate Tobacco Retailers

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures. For more details about these policy considerations, please contact the Consortium.

Licensing and Zoning

State and local governments are interested in monitoring and increasing compliance with tobacco control laws, such as laws prohibiting sales of tobacco products to minors. They are also interested in reducing the rates of youth initiation and adult consumption of tobacco products. Licensing and zoning laws are two long-accepted methods governments may use to accomplish these goals.

The general concept of tobacco licensing is that, consistent with its police power to protect and promote the health of its citizens, a governmental unit can require all businesses that sell tobacco to purchase a license from the government. Zoning ordinances, on the other hand, are generally used to keep incompatible uses of land apart from one another. And when used in conjunction with conditional use permits, zoning can accomplish results similar to licensing.

Many governments already have a history of applying licensing or zoning laws to businesses such as liquor establishments or gun shops. These existing systems might provide a tried-and-true framework that could be adapted to fit the needs of a tobacco control law and might also provide governmental employees who are well-versed in the implementation and enforcement of licensing and zoning laws. This brief guide offers pointers on how governments can use licensing and zoning to control the locations of tobacco retailers and increase compliance with tobacco control laws.

• Local Authority
• Model Policies
• Public Health Frame
• Review of Local Policies
Tobacco 21

- Sample “Minimum Legal Sales Age” ordinance
- Public Health Frame
- Strong Sample Language
- Scientific Research
- Review of Local Policies

Raising the Minimum Legal Sales Age for Tobacco and Related Products

The Tobacco Control Legal Consortium has created this series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures. We encourage you to consult with local legal counsel before attempting to implement these measures. For more details about these policy considerations, please contact the Consortium.

Background

All states in the U.S. have laws prohibiting retailers from selling tobacco products to minors. In most states, the minimum legal sales age (MLSA) for tobacco products is 18, but a few states have raised it to 19. Recently, Hawaii became the first state to raise the MLSA to 21. As of September 2015, over 100 localities in nine states have raised the MLSA to 21, including New York City, which in November 2013 became the first major city in the U.S. to raise its tobacco sales age to 21.

In 2015, the Institute of Medicine released a report containing compelling evidence of the significant health benefits of raising the tobacco sales age. The Institute conducted an exhaustive study of existing literature on tobacco use patterns, developmental biology and psychology, health effects of tobacco use, and national youth access laws, and mathematical modeling to predict the likely public health outcomes of raising the minimum legal sales age for tobacco products to 19, 21 and 25 years. The report found that an increased tobacco sales age helps delay smoking initiation among youth, which leads to lower smoking prevalence rates, saving millions of dollars in health care costs as well as significantly increasing the length of life across populations. The Institute concluded that raising the minimum sales age today to 21 would result in a 12 percent decrease in tobacco use, approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019. However, as discussed below, these types of laws have been controversial, particularly when they go beyond prohibiting illegal sales by retailers and impose penalties on underage persons for possession, use, or purchase of tobacco and related products.

In 1992, Congress passed a law (known as the Synar Amendment) which conditioned state eligibility for substance abuse prevention and treatment block grants on the state setting its
Tobacco-free Campus and Smoke-free Housing Policies

• Comments on sample tobacco-free policies and smoke-free leases
• Provide best practices for enforcement: signage, timing, and community outreach
E-cigarettes

- Incorporating e-cigarettes into local smoke-free air policies
- Help with accurate and comprehensive definitions of terms like “e-cigarettes” and “smoking”
What’s Next?

• Resources
  – Comprehensive Planning and Food Systems
  – Shared Use/Intergovernmental Agreements
  – Season Extension Laws
  – Open Meetings Laws
  – CACFP & Summer Feeding Programs
  – Food Council Resolution & By-laws Comparison Charts

• Webinars
  – Complete Streets – September 1, 12-1
  – Kansas’ Government Control of Local Food Policies Law – September 12, 10:30-11:30
  – Shared Use – September 22, 12-1
  – Comprehensive Planning - September 28, 12-1
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