



A Smoking Ban in Iowa: By Government Force or Market Forces?

by Amy K. Frantz

The Iowa Legislature will likely pass legislation during this session to allow local governments to adopt a local smoking ban. While supporters of the legislation highlight that it provides for local control over this issue, allowing the free market to decide this issue would be a better resolution.

In 2003 the Iowa Supreme Court ruled that local governments could not enact a smoking ban that was more stringent than state law, which states that a business may allow smoking as long as it provides separate areas for smokers and non-smokers. The Court's ruling was in response to a lawsuit brought by several Ames, Iowa, business owners. Ames was one of two cities in the state to have enacted a smoking ban prior to 2003, the other being Iowa City.

The current legislation making its way toward passage addresses the Court's ruling by giving city or county governments the authority to enact a smoking ban that goes beyond state law if they choose to do so. Senate File 236 was adopted by the Iowa Senate in March by a vote of 30-20, and is now working its way through the Iowa House of Representatives.

A poll recently conducted by the *Des Moines Register* "found that 75 percent of Iowans favor allowing cities and counties to ban smoking in public places. Among smokers, half are opposed to the idea and 43 percent support it."¹ Judging by this poll, a smoking ban enjoys great support. Unfortunately, the Legislature has chosen to allow the use of government force to ban smoking in restaurants and other public places, trampling the rights of the private owners of those "public" places in the process.

Even without a government-decreed smoking ban, many restaurants and other public places are choosing to become smoke-free on their own. If three-quarters of the state's residents are truly opposed to smoking in public, it should not be difficult to persuade even more business owners to take that step. Next time you are dining out let the management know you would prefer that smoking not be allowed, or only patronize restaurants and other businesses that are completely smoke free.

In the view of those who support a smoking ban, the drawback to allowing the market to decide this issue is that some business owners will still choose to allow smoking, even if in a limited area or after a certain hour. It is much less work to convince the government to impose your will on every business owner in the city or county.

However, once the government bans an activity in the name of protecting helpless citizens, where will it stop? What about banning the use of trans-fat in all Iowa restaurants, as they have in New York City?

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Wouldn't it be easier just to ban the sale of any greasy, deep-fat fried foods at all? What about parents who allow their children to order a hot dog from the Kids menu, along with a sugary soda to wash it down? Perhaps the government should ban restaurants from serving those items to children. Perhaps one day every restaurant will be required to have a government-approved menu.

Why stop at restaurants and bars? If the government can step in to protect restaurant customers from being exposed to smoking, perhaps they will also one day step in to protect the family members of a smoker from being exposed to smoke at home — where a person presumably spends much more time than in a restaurant. The legislation allowing local regulation of smoking currently exempts a private residence, unless it is used for child care or as a health care provider, but a future Legislature could easily remove this passage. The only reason the government may not go that far to ban smoking is its reliance on cigarette tax revenue for funding. If smokers are not allowed to smoke anywhere, they will not buy cigarettes, and Governor Culver would have a \$130 million hole in his budget.

An amendment to the legislation approved by the Iowa Senate exempted fraternal organizations, such as the American Legion, from the smoking ban. According to the amendment sponsor, Senator Mark Zieman, these “groups deserve special consideration because patrons are people who choose to be members.”² If customers do not like the policies set in regard to smoking they are free not to dine in that establishment. If an employee objects to that policy, they are free not to work for that establishment. No one is forced to eat or to work anywhere against their will in this state. A private business owner should be able to operate it with minimal government interference.

In the name of protecting customers and employers, the State government is giving local governments the authority to completely ban smoking from restaurants, bars, casinos, and other public places. But many of those public places are owned by private citizens. In voting against a similar ban last year in the state of Virginia, Delegate David Albo stated, “I want to have smoke-free restaurants and businesses. But in America, you don't pass a law to tell a private business owner who is paying rent or mortgage payments what he can and can't do in his own place.”³ If only this statement were true.

Endnotes:

¹ Jonathan Roos, “Senate OKs local smoking bans,” *Des Moines Register*, March 15, 2007, <<http://www.desmoinesregister.com/apps/pbcs.dll/article?AID=/20070315/NEWS10/703150398>> (March 29, 2007).

² Dan Gearino, “Senate gives cities, counties power to ban smoking,” *Sioux City Journal* online edition, March 14, 2007, <http://www.siouxcityjournal.com/articles/2007/03/14/news/latest_news/8d3a468404b3e1dd8625729e007829f7.txt> (March 29, 2007).

³ James M. Taylor, “Maryland, Virginia Reject Smoking Bans,” *Environment News*, The Heartland Institute, May 2006, p. 6.

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