

**New Orleans Health Department
Proposed Regulations Governing Implementation of the Smoke Free Air Act Ordinance
With Respect to Education, Signage, Complaints, and Enforcement**

I. Authority. Pursuant to Section 4-107(3) of the Home Rule Charter of the City of New Orleans and Sections 2-1000, 66-37, and 66-74(a) of the City Code, the Department of Health of the City of New Orleans proposes the following regulations relative to the implementation of Article II of Chapter 66 of the City Code, entitled the Smoke Free Air Act, including but not limited to regulations on education, required signage, the process for filing and responding to complaints, and enforcement.

II. Applicability. These regulations shall apply to all individuals, business establishments, and other locations regulated by Article II of Chapter 66 of the City Code.

III. Public Education. Pursuant to Section 66-41 of the City Code, the Department of Health is directed to educate the public about the purpose and provisions of the City's Smoke Free Air Act Ordinance. The Department has provided and will continue to provide assistance to individuals and businesses that seek to comply with the ordinance and to individuals who want to stop smoking. This assistance has been provided in the form of public information sessions, toolkits, and other educational resources. Resources, including a free business toolkit and model signage, are available at <http://nola.gov/smokefree>.

IV. Requirements.

(1) Pursuant to Section 66-74 of the City Code, the owner, manager, operator, or employer of an area where smoking or vaping is prohibited is required to: (a) post signs alerting the public that smoking and/or vaping is prohibited, and (b) remove all ashtrays from

any area where smoking is prohibited. All signs must meet the requirements outlined in Section V of these regulations.

- (2) Pursuant to Section 66-38(d) of the City Code, the owner, manager, operator, or employer of an area where smoking or vaping is prohibited is further required to direct any person who is smoking or vaping in an area where smoking or vaping is prohibited to extinguish or turn off the product. If the person does not stop such use, the owner, manager, operator, or employer is directed, if applicable, to refuse service and to immediately ask the person to leave the premises.
- (3) Pursuant to Section 66-40(b) of the City Code, individuals are prohibited from smoking or vaping in any area where smoking or vaping is prohibited.

V. No Smoking/Vaping Signs.

- (1) All signs required by Section 66-74(a) of the City Code shall contain the following elements:
 - (a) The words “No Smoking or Vaping”,
 - (b) The international “no smoking” and “no vaping” symbols,
 - (c) A reference to the relevant provisions of City Code as follows: “New Orleans City Code Chapter 66, Article II”,
 - (d) A reference to the City’s Smoke-Free Website as follows: “nola.gov/smokefree”,
 - (e) A reference to the City’s 311 Service,
 - (f) The logo for the City of New Orleans, and
 - (g) The logo for the New Orleans Health Department.

- (2) In *enclosed areas*, identified in Section 66-71 of the City Code, signs shall: (a) be made of durable vinyl, plastic, or metal, (b) be no smaller than 8.5 inches by 11 inches, and (c) be posted in plain view at all entrances of such enclosed areas and at the entrance to all public restrooms. A window cling may be used in lieu of a vinyl, plastic, or metal sign so long as it is no smaller than 4 inches by 6 inches and meets all other requirements.
- (3) In *unenclosed areas*, identified in Section 66-72 of the City Code, signs shall: (a) be made of durable vinyl, plastic, or metal, (b) be no smaller than 8.5 inches by 11 inches, and (c) be posted in plain view of the unenclosed area.
- (4) Notwithstanding any provision under this Section to the contrary, all vehicles regulated by Sections 66-71 or 66-72 of City Code shall have at least one sign or window cling that is no smaller than 4 inches by 6 inches, meets all the requirements of Section V(1) of these regulations, and is plainly visible to passengers.
- (5) Model signage for public use is posted at <http://nola.gov/smokefree>.

VI. Complaints.

- (1) Violations of the ordinance by business establishments may be reported to the Health Department by completing and submitting a formal Smoke-Free Ordinance Complaint Form. The complaint form is posted at <http://nola.gov/smokefree/complaints/>. Individuals may also obtain the complaint form by calling 311 or (877) 286-6431 or visiting the Health Department in person at City Hall, 1300 Perdido Street, Suite 8E18, New Orleans, Louisiana 70112.
- (2) Within 5 business days of receiving a first completed complaint form for a business establishment, Health Department staff shall (a) notify the complainant by phone or

email that the complaint has been received, and (b) notify the business establishment where the violation(s) is alleged to have occurred by mail that a complaint has been received. The notification to the business establishment shall be sent by certified mail to the address on file with the New Orleans Department of Finance.

- (3) Following receipt of a second completed complaint form for a business establishment that alleges a violation(s) occurring seven or more calendar days after the first completed complaint form is received, Health Department staff shall conduct a site visit at the business establishment where the violation(s) is alleged to have occurred to investigate and substantiate the alleged violation(s).
- (4) Following receipt of each additional completed complaint form for a business establishment that alleges a violation(s) occurring after the site visit required under Section VI(3), the Health Department shall follow the procedure set out in Section VII(2).
- (5) Complainants are encouraged to submit time and date stamped photographs documenting the alleged violation(s) with the completed complaint form.
- (6) Complainants may also submit anonymous complaints by calling 311 or (877) 286-6431 or visiting <http://nola.gov/smokefree/complaints/>. Since it is not possible to follow-up with anonymous complainants, based upon the content included, the Health Department may exercise discretion in processing these complaints.
- (7) Complaints received prior to the effective date of these regulations shall not count toward the number of complaints received under this Section. However, these complaints may be used as evidence of noncompliance.

VII. Enforcement.

- (1) Following a site visit under Section VI(3), the Director of the Department of Health shall review all evidence and may, based on the content, refer the violation(s) for administrative adjudication, as provided in Chapter 6 of City Code.
- (2) Following receipt of each additional complaint under Section VI(4), the Director of the Department of Health shall review all evidence and may, based on the content, refer the violation(s) for administrative adjudication, as provided in Chapter 6 of City Code. In addition to administrative adjudication, the Director of the Department of Health may refer the violation(s) to the Alcoholic Beverage Control Board for possible suspension or revocation of the business establishment's alcoholic beverage permit or remedial sanctions.
- (3) The Health Department may also conduct site visits at any time to monitor compliance. Following a site visit, the Director of the Department of Health shall review all evidence and may, based on the content, refer the violation(s) for administrative adjudication, as provided in Chapter 6 of City Code. In addition to administrative adjudication, the Director of the Department of Health may refer the violation(s) to the Alcoholic Beverage Control Board for possible suspension or revocation of the business establishment's alcoholic beverage permit or remedial sanctions.
- (4) A violation of Section IV(1) documented at two consecutive site visits creates a rebuttable presumption that the violation occurred continuously on all intervening days. Per Section 66-40(h) of City Code, each day on which a violation occurs shall be considered a separate and distinct violation.
- (5) Continued noncompliance with the Smoke Free Air Act may result in:

- (a) Additional administrative adjudication proceedings, as provided in Chapter 6 of City Code,
- (b) Additional referrals to the Alcoholic Beverage Control Board for possible suspension or revocation of the business establishment's alcoholic beverage permit or remedial sanctions, or
- (c) Other penalties or legal action permitted by Section 66-40 of City Code, including fines, suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred, and abatement as a public nuisance.

VIII. Effective Date. These regulations shall be effective on the 22nd day following adoption by the New Orleans City Council, as required by Section 2-1000(g) of the City Code.