

Policy and Procedure
BUNCOMBE COUNTY HEALTH AND HUMAN SERVICES/DEPARTMENT OF HEALTH

Title: Smoke-free Education and Enforcement Policy for Buncombe County	Policy #: 1000.74A	Revision #: 1	Page 1 of 3
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Category & Subcategory:	Administrative Policy and Procedure Tobacco Policy	Original Effective Date:	2/2/10	This Revision Effective:	8/22/14
Persons Affected	Buncombe County workforce, enclosed restaurants, bars, lodging in Buncombe County				
Approval By/Date	_____	_____	_____	_____	_____
	Health Director	Date	Medical Director	Chair, Board of Health	
Review Date & Initials	_____	_____	_____	_____	_____

	Date of Revision	Summary of Changes	Section
1.0 Revision History	7/14	Changed definition of enclosed area Deleted Lodging Establishment Added online complaint website Clarified staff involved in complaint process	4.3 3.0, 4.5 Throughout Throughout

2.0 Purpose

The purpose of this policy is to ensure smoke-free public places in accordance with North Carolina law. In May, 2009, state law changes created new statewide smoking prohibitions and also expanded local authority to adopt local smoking bans. North Carolina’s smoke-free law prohibits smoking in enclosed areas of almost all bars and restaurants. Smoking is also not allowed in enclosed areas of lodging establishments if the establishment prepares and serves food or drink.

Smoke-free restaurants, bars and lodging facilities reduce exposure to second-hand smoke, which has been proven to cause cancer, heart disease and asthma attacks in both smokers and non-smokers.

As the county’s public health institution, Buncombe County Department of Health (BCDH) is committed to enforcing laws, ordinances, etc. which promote a safe, clean, and healthy environment for our clients, workforce and community.

3.0 Policy

It is the policy of Buncombe County Department of Health to ensure the provision of education and enforcement regarding smoke-free regulations for restaurants and bars as defined by state law.

4.0 Definitions

For purposes of this policy, terms are defined as follows:

- 4.1. **Bar** - an establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001
- 4.2. **Cigar bar** - an establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the following:
 - a. Generates 60% or more of its quarterly gross revenue from the sale of alcoholic beverages;
 - b. Generates 25% or more of its quarterly gross revenue from the sale of cigars;
 - c. Has a humidor on the premises;
 - d. Does not allow individuals under the age of 21 to enter the premises.
- 4.3. **Enclosed area** - (a) An area is enclosed if it has (1) a roof or other overhead covering and (2) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area. For more information on what defines an area as “enclosed,” see detail in 10A NCAC 39C .0104 “Clarification of the Definition of Enclosed Area”
- 4.4. **Local government** – a local political subdivision of the state, an airport authority, or an authority or body created by an ordinance, joint resolution, or rules of any such entity.
- 4.5. **Private club** – (a) a country club or (b) an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member’s guest, and is either incorporated as a nonprofit corporation under state law or is tax-exempt under federal law.
- 4.6. **Public place** – an enclosed area to which the public is invited or in which the public is permitted.
- 4.7. **Restaurant** - a food and lodging establishment that prepares and serves drink or food as regulated by the state’s sanitation laws.
- 4.8. **Smoking** - as the use or possession of a lighted cigarette, lighted cigar, lighted pipe or other lighted tobacco product.

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5.0 Responsibilities

- 5.1. The Health Director will ensure that supervisory staff in affected programs e.g. Community Health Improvement, Environmental Health, and Administration are notified of and trained on this policy as appropriate.
- 5.2. Supervisory staff is responsible to notify and train workforce on implementation of this policy.
- 5.3. Workforce is responsible to carry out this policy and procedures as outlined.

6.0 Procedure

6.1. Recording Community Complaints for Potential Violations

- 6.1.1. NC Office of Citizen Services, CARE-LINE, receives and logs complaints from the public of potential violations via the toll-free number (1-800-662-7030).
- 6.1.2. Department of Public Health/ Tobacco Prevention and Control Branch will monitor and collect complaint calls through the on- line complaint website: www.smokefree.nc.gov.
- 6.1.3. Local Health Departments (LHD) receiving complaint calls should enter the data on-line at www.smokefree.nc.gov.
- 6.1.4. Local Environmental Health Specialists may observe a violation during a routine sanitation visit and may educate and correct on-site or may enter the violation information on-line at www.smokefree.nc.gov.
- 6.1.5. The complainant may provide name and contact information or remain anonymous.

6.2. Receiving Complaints

- 6.2.1. CARE-LINE will record all received complaints and send weekly reports to LHD.
- 6.2.2. BCDH Health Administrative Assistant will maintain a smoke-free reporting database of ongoing reports located on an agency computer drive accessible to appropriate staff (including Environmental Health Specialist supervisor and Community Health Improvement Manager)
- 6.2.3. Health Director will receive weekly emails and forward email to the Health Administrative Assistant, Environmental Health Specialist and the Community Health Improvement Manager.
- 6.2.4. Phone Center or other staff receiving incoming calls should direct the website. If the caller requests to speak with a LHD staff, transfer call to the Health Administrative Assistant (250-5214) who can assist the caller with logging the complaint online.

6.3 First Complaint/Education

- 6.3.1. Health Administrative Assistant will receive report of complaint from state.
- 6.3.2. Health Administrative Assistant will coordinate with Health Director and Community Health Improvement Manager to ensure that the recommended educational letter (template on the website) is signed and sent in a timely manner. Health Director Signed letters are copied and files maintained by the Health Administrative Assistant.
- 6.3.3. Community Health Improvement Manager may make a follow-up call to the business in question to ascertain receipt of letter and offer assistance.
- 6.3.4. No further action is taken if, after review by Community Health Improvement Manager, adherence to the referenced state law is observed and complaints cease.

6.4. Second and Third Complaint/First and Second Violation

- 6.4.1. If a second or third complaint is received from state weekly reporting process, Health Administrative Assistant will log complaint in agency database and provide same day notification to EHS and Community Health Improvement Manager.
- 6.4.2. EHS will make an unannounced on-site compliance inspection to the establishment in question following GS 139A-496 guidelines to determine evidence of violation and notify the Health Director and Community Health Improvement Manager of findings within a 2 day turn around time.
- 6.4.3. If the EHS confirms the violation, the Health Administrative Assistant will coordinate with the Health Director's office to ensure that the recommended warning letter (template on the website) is signed and sent in a timely manner. Health Director Signed letters are copied and files maintained by the Health Administrative Assistant.
- 6.4.4. Health Director will direct appropriate staff for any variances on this protocol for establishments where EHS is not conducting compliance inspections.
- 6.4.5. Community Health Improvement Manager may make a follow-up call to the business in question to ascertain receipt of letter and offer assistance.
- 6.4.6. No further action is taken if, after review by Community Health Improvement Manager, adherence to the referenced state law is observed and complaints cease.

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6.5. Fourth Complaint/Third Violation

- 6.5.1. If fourth complaint is received from the state weekly reporting process, follow 6.4.1.and 6.4.2.
- 6.5.2. If the EHS confirms the violation, the Community Health Improvement Manager will coordinate with the Health Director's office to ensure that the recommended warning letter for the third violation (template on the website) is signed and sent in a timely manner via Certified Mail/Returned Receipt. Health Director Signed letters are copied and files maintained by the Health Administrative Assistant.
- 6.5.3. At this level, the warning letter includes notice that the Health Director is imposing an administrative penalty/fine, the amount of the fine and how and where to pay the fine.
- 6.5.4Community Health Improvement Manager may make a follow-up call to the business in question to ascertain receipt of letter and offer assistance.
- 6.5.5No further action is taken if, after review by Community Health Improvement Manager, adherence to the referenced state law is observed and complaints cease.

6.6. Subsequent Violations

- 6.6.1. Subsequent violations of the law are considered separate and distinct violations of the law and the person in violation is subject to a fine of up to \$200. Each day on which a violation of this law or rules occurs may be considered a separate and distinct violation.
- 6.6.2. Health Director will consult with County Attorney for potential court ordered injunction or other legal recommendation as appropriate.

7.0 Legal Authority

- 7.1. North Carolina General Statute 130A-496, 130A-497, 130A-498, S.L 2009-27