

## **Indoor Clean Air Act (ICAA) Enclosed Area: Frequently Asked Questions (FAQ)**

### *Education and remediation activities*

#### **Enclosed Area Background**

The ICAA applies to “enclosed areas” open to the public or under the control of an employer. As of January 1, 2018, enclosed area is defined to mean *“the entirety of the space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.”*

To consistently evaluate whether an outside area is an “enclosed area,” Local Public Health Authorities (LPHAs) will refer potential outside enclosed areas discovered during site inspections to the Oregon Health Authority (OHA) for a determination of whether OHA will enforce the ICAA for the outside enclosed area. Further description of how OHA interprets “enclosed areas” in the Policies and Procedures Manual.

#### **Frequently Asked Questions**

##### **Q. How will OHA communicate with businesses about this change?**

A: Educational materials are available online that provide information on enclosed areas. Pictures of areas that are enclosed and are not enclosed, along with a rationale for the determination, are also posted online for businesses to review.

##### **Q: Do TPEP coordinators need to notify businesses who have previously developed remediation plans for enclosed areas under the new definition?**

A: It is not necessary for coordinators to notify businesses who have previously developed remediation plans for enclosed areas. Please contact your liaison for guidance, if needed.

##### **Q. What do I tell a business who asks for assistance in designing a smoking shelter?**

A: LPHAs are welcome to share information about the law and remind business owners of the intent of the ICAA. In addition, while LPHAs may engage owners or employees in discussion about these areas, they should remind business owners to construct areas in consultation with legal counsel. LPHAs that carry out ICAA activities on behalf of OHA must follow these guidelines during site visits as well as during other correspondence with businesses outside of ICAA activities. This is to assure consistency and uniformity in enforcement across the state.

##### **Q. How do I know if a complaint is actionable or not?**

A: When determining if the complaint is actionable, consider only the text entered in the complaint. For example, “It smells like smoke within 10 feet of the entrance to Happy’s Bar” is not actionable, as smoking within 10 feet was not stated in the complaint text. The text alone must describe a violation of the ICAA to be marked as actionable (or valid). The LPHA should not take into account personal knowledge, such as when the inspector has visited the location before, if the information is not included in the complaint text.

**Q. What if the photo attached to the complaint illustrates a violation, but the text does not?**

A: If the text does not indicate an actionable complaint but the attached photo illustrates a clear violation of the ICAA, mark the complaint as actionable. Enter a note for the complaint describing what violation was illustrated in the photo.

**Q. What is a potential outside enclosed area?**

A: A potential outside enclosed area is a structure that is outside the main premises of a business (i.e. the main building), but is associated with the business (i.e. at the same address). These are areas in which clients, patrons, residents or other users might smoke or are permitted by the business to smoke or vape tobacco products or use inhalant delivery systems and the structure appears to meet the definition of enclosed area. An outside enclosed area could also be a stairwell, an outside apartment hallway or other structure that is not designated or designed for smoking.

**Q. What should I do if I see a violation in a potential outside enclosed area?**

A: If there is a violation observed in a potential outside enclosed area during a site visit, follow the procedure described in the [ICAA Policies and Procedures Manual](#).

**Q. What if I see multiple potential outside enclosed areas at a business?**

A: If there are multiple potential outside enclosed areas with observed violations during a site visit, follow the procedure described in the [ICAA Policies and Procedures Manual](#), completing a separate Form A for each of the potential outside enclosed areas.

**Q. Why am I required to take photos of violations?**

A: OHA will use the photos and videos of the potential outside enclosed area to determine whether the area is enclosed. OHA needs to have sufficient photos that document the complete structure, in order to make an informed decision.

**Q. What if a business has questions about the Enclosed Area review form contents?**

A: All determinations by OHA are made in consultation with legal counsel. Direct any questions about the Enclosed Area review form to Ilana Kurtzig at [ilana.s.kurtzig@dhsoha.state.or.us](mailto:ilana.s.kurtzig@dhsoha.state.or.us).

*Smoke shops*

**Q. What parts of the business are certified and subject to inspection?**

A: All structures located at the address certified by OHA are subject to inspection.

**Q. How does the Tobacco 21 law affect smoke shops?**

A: Smoke Shop A and Smoke Shop B both prohibit persons under 21 years of age from entering the premises. Smoke Shop C prohibits persons under 18 years of age from entering the premises. All three types of smoke shops (A, B, C) are prohibited from selling tobacco products or inhalant delivery systems to persons under 21 years of age.

**Q. Are smoke shops allowed to sell alcohol?**

A: Smoke Shop A and Smoke Shop B cannot sell, offer or allow on-premises consumption of alcohol. These smoke shops must post signs stating that on-premises consumption of alcohol is prohibited. Smoke Shop C cannot sell or offer alcohol for on-premises consumption. A sign stating this is not required.

**Q. What do I do if I see a potential outside enclosed area at a smoke shop?**

A: Inspect all potential outside enclosed areas located at the smoke shop address certified by OHA, checking to make sure that they are not violating any of the smoke shop requirements. All areas on the smoke shop premises (i.e. at the smoke shop address) must comply with all smoke shop requirements.

**Q. What do I do if I see someone who appears to be underage in a smoke shop?**

A: As an inspector, it is not your role to check identification of customers in smoke shops or to ask customers their age. If you see a person in the smoke shop who is very clearly under the age of 18 (e.g. a baby or a small child), make a note on the inspection form and inform OHA via email.