



OREGON PUBLIC HEALTH DIVISION
Health Promotion & Chronic Disease Prevention Section

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The Oregon Indoor Clean Air Act (ICAA): a guide for owners of restaurants, bars and other businesses

Why should I read this guide?

The Oregon **Indoor Clean Air Act**: a guide for owners of restaurants, bars and other businesses is intended to help businesses understand the ICAA and remain compliant with the law. It was developed at the Oregon Health Authority (OHA) with input from local businesses.

Those who use the manual are welcomed to submit feedback and ideas at any time to MoreFreshAir@state.or.us.



**NO SMOKING
OR VAPING
WITHIN 10 FEET**



Under Oregon's Indoor Clean Air Act this business is smoke, aerosol and vapor free (ORS 433.835-870). Smoking, aerosolizing or vaporizing of inhalants is not allowed within 10 feet of building entrances, exits, windows, accessibility ramps and air intake vents.

For information and complaints:
1-866-621-6107 or <http://healthoregon.org/morefreshair>

Want to quit smoking?
1-800-QUIT-NOW (800-784-8669)
or 1-855-DEJEL0-YA (Espanol)

**SMOKEFREE
oregon**

What is the ICAA?

The ICAA **protects all Oregonians** from the harms of secondhand smoke. Also known as the Smoke-free Workplace Law, the ICAA creates smoke free public places and places of employment with the intent of protecting the health of employees and the public. Tobacco remains the main cause of preventable death and disease in the United States, including in Oregon.

The ICAA applies to smoking, vaporizing and aerosolizing of inhalants in and around **public places and places of employment**. A public place is defined as “an enclosed area open to the public.” ([ORS 433.835-433.875](#)) A place of employment is defined as “an enclosed area under the control of a public or private employer, including work areas, employee lounges, vehicles that are operated in the course of an employer’s business and that are not operated exclusively by one employee, restrooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways.”

Businesses are not required to allow smoking on the premises. At any time, an owner may designate his/her entire business premises tobacco-free or smoke-free.

Under the ICAA, for public places and places of employment, smoking, vaporizing and aerosolizing of inhalants is also prohibited within 10 feet of all entrances (including stairs), exits (including stairs), and accessibility ramps that lead to and from an entrance or exit, windows that open and air-intake vents. This is because smoke, vapor or aerosol enters buildings through these openings and creates areas where the air is no longer clean. In addition, these areas must be clear of smoke, vapor and aerosol to allow employees and customers to enter and exit the business without being exposed to secondhand smoke. Click the links to see the [statute](#)* and [rules](#).

***Note:** Oregonlegislature.gov updates legislation every two years. As of January 2018, the 2015 edition is currently online. To see changes to the law that are not reflected online: [Senate Bill 754](#) and [Senate Bill 235](#).

What are tobacco products and inhalant delivery systems?



An **inhalant delivery system (IDS)** is a device used to deliver nicotine or cannabinoids, such as marijuana, in the form of a vapor or aerosol. These are products such as e-cigarettes and heatsticks. IDS also includes the components of these types of devices such as e-liquids and cartridges.

Tobacco products are products prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or other device. Examples of tobacco products are cigarettes, cigars, stogies, chewing tobacco, snus, and other forms of tobacco used for chewing or smoking. **Tobacco products** also include **devices that can be used to deliver tobacco** products such as standard pipes and glass pipes.



You can find the technical definitions of these products by looking at the statute (ORS [431A.175](#), [431A.183](#), [323.010](#)).

How do I know if the ICAA applies to my business?

All workplaces and enclosed public places must be smoke, vapor and aerosol free. This includes work vehicles that are not operated exclusively by one employee as well as hotels and motels with an exception (see below).

Some cities and counties in Oregon have enacted local smoke free workplace laws. Employers must comply with all local laws, which are stricter than the state law. OHA enforces the state law only.

Businesses are not required to allow smoking on the premises. At any time, an owner may designate his/her entire business premises tobacco free or smoke free.

Exceptions to the ICAA include:

- Smoking tobacco products in certified smoke shops
- Smoking cigars in certified cigar bars
- Smoking in hotel or motel rooms that are designated as smoking allowed (may not exceed 25% of sleeping rooms)
- Smoking of non-commercial tobacco for American Indian ceremonial purposes

The ICAA does not apply on tribal lands.



As an employer, it is your responsibility to ensure that your workplace is smoke, aerosol and vapor free. **All employers are subject to the ICAA.**

What do I have to do to comply with the law?

As an employer, it is your responsibility to ensure that your workplace is smoke, aerosol and vapor free. **All employers are subject to the ICAA.** Employers are required to:

- 👤 Prohibit smoking, aerosolizing or vaporizing in the workplace and within 10 feet of all entrances, exits, accessibility ramps that lead to and from an entrance or exit, windows that open and air-intake vents.
- 👤 Post "**No Smoking or Vaping within 10 feet**" signs at all building entrances and exits ([decals are available for download and printing](#)).
- 👤 Remove all ashtrays and other receptacles for smoking debris from your workplace and from within 10 feet of entrances, exits, accessibility ramps that lead to and from an entrance or exit windows, and ventilation intakes.
- 👤 Ensure that outdoor seating areas where smoking is allowed are not enclosed.
- 👤 Mark as non-smoking/aerosolizing/vaporizing outdoor seating or dining areas that are within 10 feet of entrances, exits and accessibility ramps that lead to and from an entrance or exit, windows that open and ventilation intakes.

Other steps you can take to make sure your business is in compliance with the law:

- Make sure **all employees are informed** about the law and how to comply.
- Talk with your customers about the law.
- **Provide training** to employees on how to ask visitors and patrons not to smoke, aerosolize or vaporize.
- Encourage employees who use tobacco to quit. Encourage them to visit www.quitnow.net/oregon or call Oregon's toll-free **QUIT LINE at 800-QUIT-NOW (800-784-8669)** or, for Spanish, **855-DEJELO-YA (855-335356-92)**.
- Review ICAA rules and requirements [OAR 333-0015-0025 to 333-015-0085](#).

Does this law apply to smoke shops?

Yes. Smoke shops are certified by OHA and smoking of certain tobacco products is allowed inside the premises. Vaping is not allowed in certified smoke shops. Certified smoke shops receive one unannounced site visit each year as part of the certification. In addition, smoke shops may receive site visits triggered by complaints from the public.

Encourage employees who use tobacco to quit. Encourage them to visit www.quitnow.net/oregon or call Oregon's toll-free **QUIT LINE at 800-QUIT-NOW (800-784-8669)** or, for Spanish, **855-DEJELO-YA (855-335356-92)**.

How is the law enforced?

The ICAA is a complaint-driven law. That means that enforcement activities do not take place without a complaint from a member of the public, including employees of the business. Businesses must receive at least two complaints before an inspector visits the business. After the first complaint, businesses receive a letter explaining the law and how to comply.

Employees and the public may report violations of the law by completing an [online complaint form](#) or by calling **1-866-621-6107**.

Complaints will be investigated and violations pursued. The Oregon Health Authority designates Local Public Health Authorities (LPHA) to follow up on all complaints on behalf of OHA. Employers must permit OHA or OHA's designee to inspect any and all parts of the premises (OAR 333-015-0075(2)(c)). In this guide, the term "inspector" refers to a representative of the LPHA who is responsible for conducting education and remediation with businesses on behalf of the state.



Failure to comply with the law may result in a fine of up to \$500 per day for each violation and/or further legal action such as an injunction where there are multiple violations.

Businesses are given at least **three opportunities to come into compliance** with the ICAA before OHA considers civil action. Letters and visits by inspectors with education and assistance take place when complaints are received from the public. When businesses do not comply with the law after working with inspectors, OHA may take civil action.

Employees and the public may report violations of the law by completing an [online complaint form](#) or by calling **1-866-621-6107**.

What to expect during a site visit

The inspector will follow the steps listed below when conducting a site visit. Please **allow the inspector** to do the following to ensure accuracy and completeness:

1. Take pictures and/or video documenting compliance and/or violations
 2. Inspect the entire property. It is a violation of the ICAA to prohibit the inspector from inspecting all or any part of the premises, including areas not open to the public.
- **Site visits are conducted during business operating hours.**
 - **Upon entering the business, inspectors will identify themselves to an employee and ask to speak to a manager or owner.**
 - **Inspectors will explain the purpose of their visit to the employee. The employee that works with the inspector is called the Person In Charge (PIC).**
 - ⇒ Inspectors will further explain that the ICAA is a complaint-driven law and that, on behalf of the state, LPHA are required to follow up on all complaints.
 - **Inspectors will inspect the premises.**
 - ⇒ They will **request access to all areas** of the business, including those areas that are not open to the public. If access is denied, the inspectors will refer the refusal to OHA for imposition of civil penalties.
 - ⇒ They will use a tape measure if there are questions about the distances from entrances, exits, accessibility ramps, windows that open and ventilation intakes. Note that stairs are included in “entrances” and “exits,” therefore smoking and vaping should not occur within 10 ft. of stairs.
 - **If the business is a smoke shop:**
 - ⇒ Inspectors will explain to the employee whether the site visit is an annual inspection or a site visit related to a complaint.
 - **If your business has a potential outside enclosed area*:**
 - ⇒ The inspectors **may take several photos** of the area, both inside and outside of the structure.
 - **The inspector will explain the inspection results, including any violations, to the PIC and check any violations on the Site Visit Form(s). They will also obtain the PIC’s signature.**
 - ⇒ They will record the PIC’s name and contact information on the site visit form(s).
 - ⇒ They will double-check that the correct boxes are checked on the site visit form(s).
 - ⇒ If needed, they will discuss a remediation plan with the PIC and confirm that he/she understands what needs to take place to come into compliance with the law.
 - ⇒ They will confirm with the PIC the date by which the remediation plan must be completed.
 - ⇒ They will inform the PIC that a remediation plan site visit will be unannounced.
 - ⇒ They will sign and date the Investigator line and have the PIC sign and date on the appropriate line.
 - ⇒ They will leave a copy of the site visit form(s) with the PIC.
 - **If a remediation or post-remediation site visit is conducted, the steps above will be followed using the associated remediation or post-remediation forms.**
 - **If a business does not complete the remediation plan or has additional violations:** When an inspector returns to check for compliance with the remediation plan, the case will be forwarded to OHA for consideration of civil penalties. **If violations of the ICAA are discovered on a remediation or post-remediation site visit, the inspectors will refer the matter to OHA for imposition of civil penalties.**



Outside Enclosed Areas*

What is a potential outside enclosed area?

A potential outside enclosed area is a structure that is outside the main premises of a business, but is associated with the business. These are areas in which clients, patrons, employees, residents or other users might smoke or are permitted by the business to smoke or vape tobacco products or inhalant delivery systems, but potentially meets the definition of an 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.





Enclosed area is defined in Oregon Laws 2017, Chapter 732 (Senate Bill 235) as “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.”

In the Oregon Administrative Rules (333-015-0030), the definition of a “wall” is: any architectural partition, permanent or temporary, with a height and length greater than its thickness, used to divide or enclose an area or to support another structure. Walls include, but are not limited to, partitions constructed of plastic, mesh or other screening materials, slats louvered blinds, fabric, or blankets, and partitions with latticing or other open frameworks.

If an inspector determines that the business has a potential outside enclosed area, he or she will notify the person in charge, take photos and/or video of the area and record notes. This documentation is forwarded to OHA for consideration.

The inspectors will indicate on the inspection form that the business has a potential outside enclosed area and that OHA will further review the area before making a determination on whether the area will be enforced as an enclosed area.

If OHA determines the potential **outside enclosed area IS enclosed**:

-  Within four weeks, the inspector will return and create a remediation plan with the business. The inspector will provide the business the enclosed area review form which contains the rationale for OHA’s determination. The inspector will create a remediation plan with the business.
-  The inspector will return again to the business within 30 days of the remediation plan due date to ensure the outside smoking area remediation plan is complete.
-  **If OHA determines the potential **outside enclosed area IS NOT enclosed**:** The inspector will either return to the business to provide detailed rationale on the enclosed area review form, or mail the form to the business.
-  **If a business does not complete the remediation plan or has additional violations:** When an inspector returns to check for compliance with the remediation plan, the case will be forwarded to OHA for consideration of civil penalties. **If violations of the ICAA are discovered on a remediation or post-remediation site visit, the inspectors will refer the matter to OHA for imposition of civil penalties.**



If an inspector determines that the business has a potential outside enclosed area, he or she will notify the person in charge, **take photos and/or video** of the area and record notes.



Why won't an inspector or OHA just tell me how to build a smoking area?

Inspectors provide education to businesses on the ICAA and how businesses can comply with the law. OHA does not have a process for reviewing and approving structures and therefore does not direct businesses as they create or modify structures. While you may have conversations with inspectors about how to comply with the law, and share ideas, inspectors are not lawyers and conversations with inspectors are not legal advice. Businesses should consult legal counsel before creating or modifying structures.

I want to know who complained about my business. Can I find out?

All complaints received are public record. Complaints about potential violations of the ICAA can be made anonymously or the complainant may leave their name and contact information. If the complainant is anonymous, the inspector will tell you that. Businesses may make a formal records request to OHA to receive the contents of the complaint, including the name of the complainant.

Click on the following links for more information:

- [Oregon's Indoor Clean Air Act](http://www.healthoregon.org/morefreshair) (www.healthoregon.org/morefreshair)
- [Enclosed Area Enforcement](#) (includes photos of outside areas)
- [Information for retailers of tobacco products and inhalant delivery systems](http://www.healthoregon.org/tobaccoretailsales) (www.healthoregon.org/tobaccoretailsales)

Contact your local public health authority or contact the Oregon Health Authority:
Voice: 971-673-0984 or email: MoreFreshAir@state.or.us