



SMOKE FREE NEW MEXICO
Improving the state of our health.



Frequently Asked Questions about the Dee Johnson Clean Indoor Air Act

Categorized for:

- General Questions
- Restaurants & Bars
- Business Owners
- Law Enforcement
- Municipalities

General Questions

1. Has this type of law been enacted in other places?

Currently (as of June, 2007) 20 states, the District of Columbia, and more than 500 cities nationwide have passed comprehensive “no-smoking” laws similar to the Dee Johnson Clean Indoor Air Act, prohibiting smoking in indoor public places and workplaces including restaurants, bars and nightclubs. Our neighboring states of Arizona, Utah, and Colorado have all enacted such laws. More than 2,500 municipalities across the country have enacted some type of local smoke-free law, including 12 cities and one county in New Mexico.

2. When does the law take effect?

The Dee Johnson Clean Indoor Air Act takes effect at 12:01am June 15, 2007.

3. Who is responsible for enforcing this New Mexico state law?

Local fire, police, and sheriff’s departments are named as enforcing agencies by the Dee Johnson Clean Indoor Air Act. Local communities that have their own local laws may have additional enforcement agencies designated to enforce those local laws.

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4. What citation form will enforcement agencies use to cite people for violating the law and what statute will they cite under?

Individual communities and counties may be handling the citation process slightly differently. Most communities already have available to them a process for issuing non-traffic types of citations that would apply to other minor offenses under state law or local law. The Dee Johnson Clean Indoor Air Act may be cited under section 24-16-1 et seq. NMSA 1978 as of June 15, 2007.

5. In communities that already have local clean indoor air ordinances, will persons be cited under state law or local law?

An individual in violation of the Dee Johnson Clean Indoor Air Act should be cited under the state law in any community that does not have a local law in place. If a local jurisdiction has some smoke-free areas provided for under local law that are consistent with the state law or extend to additional areas otherwise exempted in the state law, then an individual in violation of those local requirements may be cited under local law instead for any violation applicable to that local law.

6. What does the new statewide law mean if my city or county already has smoking restrictions in place under a local ordinance?

The Dee Johnson Clean Indoor Air Act will not serve as the only no-smoking law in the state, but it does set forth the minimum requirements for indoor workplaces and public places where smoking is regulated and these minimum standards apply state-wide. The statewide law does the following: (1) establishes where people can smoke and where they can't if your local community is not currently covered by any city or county local law; and (2) ensures that any provisions that are weaker in your local law (compared to the state law) are now made AT LEAST AS STRONG as the statewide law.

7. What if my local community wants (or has) a local non-smoking law stronger than the state law?

Cities and counties may consider enacting more stringent no-smoking standards for their communities, in accordance with the "explicit non-preemption" section of House Bill 283, the Dee Johnson Clean Indoor Air Act, "provided that the smoke-free provisions of

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such a county or municipal ordinance are inclusive of all minimum standards and provisions for smoke-free areas within the Dee Johnson Clean Indoor Air Act" (direct quote from the new law). This means that local communities can tailor the state law to their liking provided that any local law minimally includes AT LEAST all the same no-smoking areas and other provisions that are mandated under the new state law. Local communities may essentially add types of businesses and locations to the list of smoke-free places, but cannot subtract types of businesses and locations from that list of places covered under the state law.

Prior to the passage of the Dee Johnson Clean Indoor Air Act, 13 New Mexico communities enacted local ordinances prohibiting smoking in public places and workplaces. Those communities include: Albuquerque, Bayard, Carlsbad, Doña Ana County, Edgewood, Española, Farmington, Las Cruces, Mesilla, Roswell, Santa Clara, Santa Fe, and Silver City.

8. Does the law apply only to cigarette smoking?

The Dee Johnson Clean Indoor Air Act specifically regulates "inhaling, exhaling, burning, carrying or holding any lighted tobacco product, including all types of cigarettes, cigars and pipes, and any other lighted tobacco product".

9. How many feet do you have to be from the door to smoke?

The state law does not specify a "foot distance" a person must stand away from a door or smoke-free building while smoking. However, the state law does require businesses to not create situations where people must pass through smoke to enter or exit a building. The state law prohibits smoking within a "reasonable distance" of doorways, windows that open, and ventilation system intakes so that tobacco smoke from any outdoor smokers on a business property will not infiltrate the interior spaces of the establishment. Some local laws provide more specific requirements regarding these types of issues so please check your applicable local laws.

10. Does the state law say anything about smoking – or not smoking – on patios?

The state law does not prohibit smoking on patios nor does it prohibit smoking in most outdoor areas. However, it does prohibit smoking near business windows and ventilation intakes and it specifically prohibits entryway smoking so that people entering and exiting the building are not required to walk through areas where smoking is taking

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place. Please check your local laws for outdoor and patio smoking restrictions that may go beyond what is in the state law.

11. What are the penalties for not complying with this law?

Under the Dee Johnson Clean Indoor Air Act, any person 18 years of age or older who violates the state law is subject to a fine of up to \$100 for a first violation, up to \$200 for a second violation within any consecutive 12-month period, and up to \$500 for a third or subsequent violation within any consecutive 12-month period. Local laws may provide for penalties that meet or exceed these fines.

12. Who gets fined if someone is smoking in an establishment where smoking is prohibited - the business owner/manager or the smoker?

Any person 18 years of age or older who violates the law is subject to a fine. However, the business owner or manager is not subject to a penalty as long as he/she has posted the required signs, implemented the appropriate policy, and informed the person that he/she is violating the law. Local laws may further specify requirements for both business owners and the general public.

13. Are enforcing agencies required to conduct regular inspections for violations of the Dee Johnson Clean Indoor Air Act?

The designated enforcement agency(ies) *may* inspect for compliance with the law, but enforcement likely to be primarily complaint-driven. Under the Dee Johnson Clean Indoor Air Act, a person may register a complaint regarding an alleged violation to initiate enforcement by the local police, fire, or sheriff's department. Local laws may include additional enforcement provisions.

14. How do I register a complaint or report a violation of the Dee Johnson Clean Indoor Air Act?

Many counties and cities have a local dispatch number that persons may call to report alleged violations of the law, or citizens may call the public information number of the local police, fire, or sheriff's department authorized to enforce the law. Please check this website, www.smokefreeNM.com, for a phone listing with localized information about how to report a violation of the Dee Johnson Clean Indoor Air Act or an applicable local law.

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15. Why is the state law named the *Dee Johnson Clean Indoor Air Act*?

As First Lady of New Mexico from 1995-2003, Dee Johnson was a tireless and well-respected advocate for a wide range of health and social issues. Relevant to the New Mexico Clean Indoor Air Act, Ms. Johnson fought for years to prohibit smoking in the New Mexico state capitol buildings. In 2002, Ms. Johnson achieved success, shepherding a strong no-smoking bill through the state legislature in the winter of 2002 and making all indoor areas of the Capitol and Capitol North buildings smoke-free.

Restaurants and Bars

1. Can't I just make my bar a "private club" and allow smoking by charging my customers a small "membership fee"?

No. The Dee Johnson Clean Indoor Air Act only exempts private clubs that have been granted non-profit status by the Internal Revenue Service (Section 501). These clubs include fraternal-type organizations including (but not limited to) Elks, VFW, and Eagles.

2. What is a "cigar bar?"

Cigar bars are allowed to permit indoor smoking under the Dee Johnson Clean Indoor Air Act due to the specific nature of their business. Cigar bars are defined as alcohol-serving establishments that sell large numbers of cigars (\$10,000/year or 10% of total annual gross revenue) on an annual basis. Establishments not already in operation and meeting all necessary criteria within calendar year 2007 shall not be granted this smoking-permitted status thereafter. Other tobacco sales apart from cigar sales are not considered in the definition of cigar bars. Some local communities have local laws that do not allow for the existence of smoking-permitted "cigar bars," so check your local laws as well.

Business Owners

1. If I am the sole proprietor of my business, can I smoke in my establishment?

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The state law permits smoking in "a business of a sole proprietor or a business with fewer than 2 employees that is not commonly accessible to the public; provided that : 1) the business is not a restaurant or bar; 2) the employer or manager of such business shall provide a smoke-free work environment for each employee requesting a smoke-free work environment; and 3) cigarette smoke does not infiltrate other smoke-free work environments as provided for in the Dee Johnson Clean Indoor Air Act". However, please check your local law, since some local clean indoor air laws prohibit smoking in places of employment regardless of the number of employees and do not provide for this type of very small business exemption.

2. Is smoking allowed in a private office within a business under the Dee Johnson Clean Indoor Air Act?

Other than the specific exemption for some sole proprietors or businesses with fewer than 2 employees outlined above, it is unlawful for a person to smoke in a private office or any other areas of an indoor workplace or public place not specifically designated as a "smoking-permitted area" in the state statute.

3. What are my obligations as a business owner under the Dee Johnson Clean Indoor Air Act?

Under the Dee Johnson Clean Indoor Air Act, business owners and managers are responsible for posting necessary signs, posting and maintaining a written smoking policy, and informing persons who smoke in violation of the law (in smoking-prohibited areas of the business or establishment under their control) that they are in violation of the law. Local laws may provide for additional requirements, so please consult your local laws as well.

4. What are the signage requirements in the state law?

The Dee Johnson Clean Indoor Air Act requires a business owner or manager to post "NO SMOKING" signs at every public entrance to the business where smoking is prohibited. In indoor workplaces and public places where smoking is permitted under the state law, a "SMOKING PERMITTED" sign must be posted at each public entrance. There are no specified design or size requirements for these signs as long as they are clear, conspicuous and readable. Some local jurisdictions may have laws that further regulate signage requirements, so please check your local laws as well.

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5. As a business owner, can I adopt and enforce a stronger no-smoking policy than what is required by state law?

Yes. Nothing in the Dee Johnson Clean Indoor Air Act prohibits any business that wants to prohibit indoor smoking in any areas under their control from doing so.

6. What are the penalties for not complying with this law?

Under the Dee Johnson Clean Indoor Air Act, any person 18 years of age or older who violates the state law is subject to a fine of up to \$100 for a first violation, up to \$200 for a second violation within any consecutive 12-month period, and up to \$500 for a third or subsequent violation within any consecutive 12-month period. Local laws may provide for penalties that meet or exceed these fines.

7. Who gets fined if someone is smoking in an establishment where smoking is prohibited - the business owner/manager or the smoker?

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Municipalities

1. Do local municipalities need to do anything?

The law specifies that local fire and police enforce the Act. However, unless a municipality enacts an ordinance adopting the new law's provisions, violations of the Act will be cited into state magistrate court. Should your governing body decide to enact a local ordinance so that violations may be cited into your municipal court you may wish to utilize the model ordinance developed by the New Mexico Municipal League.

2. What do municipalities need to know if implementing a local ordinance?

First, start by utilizing the Model Ordinance developed by the New Mexico Municipal League. The Clean Indoor Act states that any local ordinance must include the minimum standards and provisions for smokefree areas that are contained in that Act. Therefore, this model ordinance contains all the provisions in the state law. You may, however, enact provisions that are stricter than the state law. Prohibiting smoking in outdoor dining areas would be an example of an additional, stricter provision that is not contained in the state law. Please note that on page 5, Section 9, Enforcement, Code Enforcement officers have been added in brackets for those municipalities that have the code enforcement function and wish to add them as those designated to enforce the Ordinance.

As always, it is recommended that your municipal attorney review any ordinance before its passage.

3. What if our municipality already has an ordinance in place?

Those municipalities that currently have a no-smoking ordinance in place should make sure that ordinance complies with the minimum provisions in the Dee Johnson Clean Indoor Air Act.