

**Nevada Clean Indoor Air Act  
Status Report to the Southern Nevada District Board of Health  
December 17, 2009**

**What provisions of the original law are currently still in place?**

The criminal provisions of the Nevada Clean Indoor Air Act (NCIAA) were enjoined in Clark County by the District Court in December 2006 and then statewide by the Supreme Court in September 2009. During the 2009 legislative session a convention facility/tobacco trade show exemption was passed and went into effect December 2009. All other provisions of the law originally passed by voters are still in place, including civil provisions for violations, the places where smoking is no longer allowed, actions which constitute violations of the law, the repeal of prohibitions on local governments' ability to pass more stringent laws than the state (i.e., preemption), and the enforcement authority of the health district.

**What can the health district do to enforce the NCIAA?**

In the opinion of the Nevada Supreme Court, "there is no question that the business owner is required to make his or her establishment non-smoking and post signs designating it as such." However, some uncertainty remains as to what affirmative actions, if any, a business owner must take if someone smokes within his or her business. The health district may also enforce the law by citing businesses who do not remove smoking paraphernalia. Based on the Supreme Court decision there is uncertainty about the meaning of this term. However, the proposed state regulations contain a definition which could minimize challenges to enforcing this requirement. The adoption of state and local regulations may also help to minimize any challenges made to the health district's regulatory authority and obligations of the establishment operators to ensure compliance with the Act.

**What potential steps can the Southern Nevada District Board of Health take now that preemption has been lifted?**

Prior to passage of the NCIAA, local governments could not pass tobacco laws that were more stringent than those of the state. With the removal of these prohibitions, staff believes that since the Board of Health represents all the jurisdictions within Clark County it has the ability to adopt and enforce local tobacco control measures that meet or exceed the minimum applicable standards set forth in statute. Individual city and county governments may also pass ordinances specific to their respective jurisdictions. However, it is also the opinion of the health district that establishments regulated by the Board of Health would be best served by the implementation of a tobacco policy consistent throughout Clark County. This consistency would be achieved by the promulgation of regulations by the Board.

Cities and the counties wishing to implement more stringent tobacco control measures in their communities as a whole should be encouraged to do so and the health district proposes to offer technical assistance and a regulatory template based on successful measures implemented in other jurisdictions. If the county and/or the cities were to implement more stringent tobacco control laws it would also be necessary to clarify the lines of enforcement authority. The current

opinion of the health district is that its authority is limited to the provisions of the applicable state statute and regulations adopted by the Board of Health. Ordinances adopted by the cities or counties would be the responsibility of the entity to enforce.

These potential actions, including the development of local regulations, do not negate the efforts to develop and adopt regulations at the state level in order to have a consistent regulatory base throughout the state.

### **Can we consider adding provisions to the health district's food regulations?**

Staff is in the process of drafting Food Establishment regulations that are currently undergoing public comment. The draft regulations contain a number of provisions related to NCIAA enforcement, including:

- Food establishments will be required, as a condition of their health permit, to be in compliance with NCIAA.
- Food establishments will be required to declare their status as either subject to, or exempt from, the provisions of NCIAA.
- Food establishments will be required to be in compliance with all applicable federal, state, and local laws as a condition of their permit.
- Stand-alone bars and restaurant facilities under the same roof will need to comply with specific structural requirements as a condition of their permit. .

In addition, a new fee was adopted by the Board of Health and took effect July 1, 2009, which provides for collection of a fee for a verified complaint. Funds generated will be used to offset enforcement costs related to compliance with NCIAA.

### **What is the status of the development of NCIAA regulations at the state and/ or local level?**

The basis for state regulations has always been to ensure a consistent foundation for enforcement statewide and with the understanding that local health authorities may then adopt additional provisions specific to enforcement in their particular jurisdiction. The development of statewide regulations began as a collaborative process among the Nevada State Health Division, the Washoe County District Health Department and the Southern Nevada Health District. An early set of draft regulations was presented at a public workshop in May 2008 and strongly opposed by representatives of affected establishments. These regulations were tabled by the state and a new set of regulations, updated after the Supreme Court decision was released in September 2009, have been reviewed by staff. These regulations will be subject to public workshop before being adopted by the State Board of Health

The purpose of these draft regulations is to set minimal enforcing standards and to serve as a foundation for regulatory efforts to be implemented at the local level.