

Guidance on Library Smoking Ban

Scope of Guidance

This is an informal, informational document for directors of public and association libraries as defined in NYS [Education Law §253](#), and trustees of those libraries, as they contemplate the measures required to comply with New York's new prohibition on smoking on the grounds of such libraries, to **take effect June 19th, 2019**.

This informational document is not intended as, nor should it be relied upon as, legal advice. Specific questions about the process or manner by which your library comes into compliance with this law should be referred to: (a) the local county department/board of health, except in New York City where questions should be referred to the Department of Health and Mental Hygiene; and (b) your library's legal counsel, if available.

Overview

In December 2018, Governor Cuomo signed [S.169-B Rivera / A.330-B Dinowitz](#) into law. This legislation amended Public Health Law §1399-o by adding a new subdivision 6 to read:

6. Smoking shall not be permitted and no person shall smoke within one hundred feet of the entrances, exits or outdoor areas of any public or association library as defined in subdivision two of section two hundred fifty-three of the education law; provided, however, that the provisions of this subdivision shall not apply to smoking in a residence, or within the real property boundary lines of such residential real property.

"Smoking" is defined in [Public Health Law §1399-n\(8\)](#) as "burning of a lighted cigar, cigarette, pipe, or any other matter or substance which contains tobacco." While companion sections of [1399-o](#) include prohibitions against "vaping", defined as the use of an electronic cigarette, the new law does not contain such language.

Looking forward, it is reasonable to assume that the new law will eventually be expanded to include the same vaping restrictions found in the article's companion sections. Because libraries will expend funds to procure and post signage, NYLA suggests that the administrative body responsible for setting library policy prospectively adopts a restriction on vaping as permitted under [§1399-r\(1\)](#) of this article, and includes such restriction on the required signage.

Compliance with the Law

Required Signage ([Public Health Law §1399-p](#))

1. **Location.** Libraries are required to "prominently post" and "properly maintain" signage where smoking is restricted; meaning, signage should be posted outside of each door of the building, regardless of whether such door serves as a public entrance or exit, located approximately where the 100-foot restricted perimeter begins, or as close to the restricted perimeter as possible.
2. **Content.** The signage must either clearly denote smoking is prohibited, or use the international "no smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it. Though not required under Article XIII, it is recommended that such signage also contain language noting the 100-foot restriction. Sample sign language: "New York State law prohibits smoking within 100 feet of public library doorways."

Violations ([Public Health Law §1399-s](#))

1. Libraries are in violation of the law when, at a location which they exercise administrative control:
 - a. they fail to post required signage at each location under such library's administrative control;
 - b. they fail to undertake good faith or reasonable efforts to ensure employees comply with the law;
 - c. they fail to designate an agent or person responsible for informing non-employee individuals when they are in violation of the law.
2. Libraries which are co-located in a building with non-library entities or organizations, or libraries which are tenants, lessees, or sub-lessees of the space in which they operate, should contact the local county department/board of health to determine what is required to comply with the law.

3. Individuals smoking within the 100-foot restricted perimeter are in violation of the law.
4. **Penalties.** Persons in violation of this law, including library employees, may be subject to a civil penalty up to \$2,000.

Enforcement ([Public Health Law §1399-t](#))

1. **Enforcement, Generally.** Enforcement is within the sole jurisdiction of the county health department/board or its designee. Though somewhat unclear, there is a distinction in the law between the duty to enforce and the duty to inform. As such, NYLA suggests that libraries covered by the new law immediately contact their county health department/board of health, or for libraries in New York City, the Department of Health and Mental Hygiene, to appropriately determine local enforcement prerogatives, policies, and processes.
2. **Duty of Libraries to Inform.** Libraries have the duty to inform employees of the law, and to undertake good faith, reasonable efforts to ensure employees comply; this duty is likely met by the posting and maintenance of required signage and written notice to employees of the law's effect. Libraries also have the duty to inform nonemployee visitors on library property of the law via required signage, and depending on local prerogative, library administration may, via a designated staff member, have the duty to inform individuals when they are in violation of the law.
3. **Duty of Libraries to Enforce.** The law does not create a duty for any library to enforce the provisions of the law, but does require a library to "designate an agent who shall be responsible for informing individuals when they are violating the law. It is unclear whether this requires a library to designate a staff member to do so, or whether a library can simply designate the local county health enforcement officer to do so. NYLA encourages libraries to contact the county department/board of health to determine the local policy.

New York State Organizations/Resources

- [American Lung Association of the Northeast](#)
- [Center for Public Health and Tobacco Policy](#)
- [New York State Smoker's Quitline](#)
- [New York State Department of Health Tobacco Control Program](#)
- [Reality Check NYS](#)
- [Tobacco-Free New York State](#)
- [Tobacco.org: New York State headlines](#)

Resources obtained from the [Capital District Smoke Free Communities](#)

Information sheet provided by New York Library Association [NYLA]