# ­

**Implementation and Enforcement Clauses for NPLAN Ordinances**

This document provides the same language as “Appendix B: Implementation and Enforcement Clauses for NPLAN Ordinances.”

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of ChangeLab Solutions. ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Support for this document was provided by a grant from the Robert Wood Johnson Foundation.

© 2014 ChangeLab Solutions

These clauses contain sample language that can be adopted for use in NPLAN model ordinances. Before adopting these clauses in an ordinance, it is essential to research state and local law to determine whether and how these sample clauses may be used in your ordinance.

## Implementation

(a) The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*agency, department or official*] shall implement, administer, and enforce this chapter. The \_\_\_\_\_\_\_\_ is hereby authorized to issue all rules and regulations consistent with this chapter and shall have all necessary powers to carry out the purpose of this chapter. The \_\_\_\_\_\_\_\_ shall have all necessary powers to enforce this chapter.

(b) The following classes of employees are authorized to issue citations for violation of this chapter: [enumerate classes of employees].

## Civil Enforcement by Injunctive Relief

The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*city attorney or county counsel*] is hereby authorized to bring an action for injunctive relief to enjoin a violation of this ordinance.

## Civil Enforcement by Civil Penalties

(a) Any person who violates this chapter [*or specific subsection*] may be liable for a civil penalty, not to exceed $\_\_\_\_\_\_ per \_\_\_\_\_\_\_\_\_ for each day such violation is committed or permitted to continue.

(b) The \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [*city attorney or county counsel*] may bring a civil action to recover civil penalties for the violations of this chapter.

(c) **Deposit of Penalties**. All monies received by the city/county in payment of civil penalties for violation of this chapter shall be deposited in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fund and used exclusively to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(d) **Attorneys’ Fees**. The \_\_\_\_\_\_\_\_\_ [*city attorney or county counsel*] also may seek recovery of the attorney's fees and costs incurred in bringing a civil action pursuant to this section.

## Administrative Enforcement and Penalties

(a) Any person who violates any of the provisions of section \_\_\_\_\_\_\_\_\_\_\_\_ shall be subject to an administrative penalty not to exceed\_\_\_\_\_\_\_ for each violation. Administrative penalties authorized by this section shall be assessed, enforced and collected in accordance with section \_\_\_\_\_\_\_\_. This [*municipal*] Code.

(b) Where an officer or employee designated in section \_\_\_\_\_\_\_\_\_\_\_ determines that there has been a violation of any of the provisions of section \_\_\_\_\_\_\_\_\_\_\_\_, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. For purposes of this section, an entity is responsible if an officer, employee or agent of the entity commits the violation. The citation shall inform the person or entity responsible of the date, time, place and nature of the violation and the amount of the proposed penalty, and shall state that the penalty is due and payable to the [Treasurer] within \_\_\_\_\_\_ business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, pursuant to section \_\_\_\_\_\_\_ to request administrative review of the citing officer or employee's determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting administrative review.

##

## Criminal Enforcement

### Violation Constituting a Misdemeanor:

Any person who violates this chapter is guilty of a misdemeanor, punishable by a fine of not more than \_\_\_\_\_\_\_\_\_ or by imprisonment in the city/county jail for a period of not more than \_\_\_\_\_\_\_\_\_, or by both such fines or imprisonment.

Violation Constituting an InfractionAny person who violates this chapter is guilty of an infraction, punishable by a fine of not more than \_\_\_\_\_\_\_\_\_ .

## Citizen Enforcement

Any aggrieved person is hereby authorized to bring a civil action for damages or for injunctive relief to enjoin a violation of this ordinance.