

Chapter 86

SMOKING

- | | |
|---|--|
| § 86-1. Short title. | § 86-7. Responsibilities of employers. |
| § 86-2. Purpose. | § 86-8. Posted smoke-free and smoking-permitted areas. |
| § 86-3. Definitions. | § 86-9. Enforcement. |
| § 86-4. Smoking prohibited. | § 86-10. Violations. |
| § 86-5. Smoking-permitted areas. | § 86-11. Violations and penalties. |
| § 86-6. Prohibition of smoking near entrances, windows and ventilation systems. | § 86-12. Nonretaliation; nonwaiver. |

[HISTORY: Adopted by the Board of Trustees of the Village of Jemez Springs 8-8-2007 by Ord. No. 161. Amendments noted where applicable.]

§ 86-1. Short title.

This chapter may be cited as the "Dee Johnson Clean Indoor Air Ordinance."

§ 86-2. Purpose.

Whereas one of the duties of government is to protect the public health, safety and welfare of its citizens, the Village of Jemez Springs governing body recognizes environmental tobacco smoke as detrimental to the public health and declares as the purpose of this chapter to protect the public health and safety by prohibiting smoking in indoor public places and indoor workplaces.

§ 86-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BAR — An establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

CIGAR BAR — An establishment that:

- A. Is a bar as defined in the definition of "bar" in this section; and
- B. Is engaged in the business of selling cigars for consumption by patrons on the premises and generates 10% or more of its total annual gross revenue or at least \$10,000 in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least 10% of its total annual sales from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending machines, shall

not be defined as a cigar bar and shall not thereafter be known as such regardless of sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the Village of Jemez Springs satisfaction compliance with this definition.

DEPARTMENT — The Department of Health.

DESIGNATED OUTDOOR SMOKING AREA — An area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place, provided that the following conditions are maintained:

- A. Smoking shall not be permitted near any building entrance, including a door, window or ventilation system, of any facility where smoking is prohibited under the provisions of this chapter, so as to prevent secondhand smoke from entering the indoor workplace or indoor public place; and
- B. Employees or members of the general public are not required to walk through the smoking area to gain entrance to the indoor workplace or indoor public place.

EMPLOYER — An individual, a partnership, a corporation or the state that employs the services of one or more individuals and includes the Village of Jemez Springs.

ENCLOSED — Any interior space predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings or open or closed windows.

INDOOR PUBLIC PLACE — The enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time.

INDOOR WORKPLACE — Any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and rest rooms, and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time.

PRIVATE CLUB — An organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof used exclusively for the organization's purposes at all times, that is operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation. The organization shall have bylaws or a constitution to govern its activities and shall have been granted an exemption as a club under the provisions of Section 501 of the Internal Revenue Code of 1986, as amended.

RESTAURANT — A coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises.

RETAIL TOBACCO STORE — A retail store used primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental,

including smoke shops, cigar shops or hookah lounges, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises,

SECONDHAND SMOKE — Smoke emitted from lighted, smoldering or burning tobacco when the smoker is not inhaling, smoke emitted at the mouthpiece during puff drawing and smoke exhaled by the smoker.

SMOKE-FREE AREA — Any building or other enclosed space where smoking is prohibited.

SMOKING — Inhaling, exhaling, burning, carrying or holding any lighted tobacco product; including all types of cigarettes, cigars and pipes and any other lighted tobacco product.

SMOKING-PERMITTED AREA — Any building or other enclosed space where smoking may be permitted, provided that secondhand smoke does not infiltrate any area where smoking is prohibited pursuant to this chapter.

§ 86-4. Smoking prohibited.

It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted pursuant to this chapter.

§ 86-5. Smoking-permitted areas.

Notwithstanding any other provision of this chapter, smoking-permitted areas include the following:

- A. A private residence, except during hours of business operation while it is being used commercially to provide child care, adult care or health care or any combination of those activities;
- B. A retail tobacco store;
- C. A cigar bar;
- D. The facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products, provided that smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited under this chapter;
- E. A state-licensed gaming facility, casino or bingo parlor;
- F. An indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the Department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements;
- G. Designated outdoor smoking areas;

- H. Private clubs;
- I. A limousine under private hire;
- J. Hotel and motel rooms that are rented to guests and are designated as smoking-permitted rooms, provided that not more than 25% of rooms rented to guests in a hotel or motel may be so designated;
- K. Enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions, provided that none of these areas are open to the general public while the private functions are occurring, and provided that smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited under this chapter;
- L. A site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans and that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. §§ 1996 and 1996a;
- M. A business of a sole proprietor or a business with fewer than two 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 this chapter; and
- N. A theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production.

§ 86-6. Prohibition of smoking near entrances, windows and ventilation systems.

Smoking is prohibited near entrances, windows and ventilation systems of all workplaces and public places where smoking is prohibited by this chapter. An individual who owns, manages, operates or otherwise controls the use of any premises subject to the provisions of this chapter shall establish a smoke-free area that extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to ensure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.

§ 86-7. Responsibilities of employers.

- A. Employers shall provide that their places of employment meet the requirements of this chapter.

- B. An employer shall adopt, implement, post and maintain a written smoking policy pursuant to this chapter.

§ 86-8. Posted smoke-free and smoking-permitted areas.

- A. To advise persons of the existence of smoke-free areas or smoking-permitted areas, signs shall be posted as follows:
- (1) For each indoor workplace or indoor public place where smoking is prohibited pursuant to this chapter, a "No Smoking" sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. Posting of "No Smoking" signs is the responsibility of the owner, operator, manager or other person having control of the indoor workplace or indoor public place; and
 - (2) For each indoor workplace or indoor public place where smoking is permitted pursuant to this chapter, a "Smoking Permitted" sign shall be posted where it is clear, conspicuous and easily legible at each public entrance, unless an owner, operator or manager chooses to prohibit smoking in all or part of an indoor workplace or indoor public place where smoking is otherwise permitted.
- B. Nothing in this chapter shall be construed so as to require the posting of signs at a residence, except during the hours of business operation while it is being used commercially to provide child care, adult care or health care or any combination of those activities.

§ 86-9. Enforcement.

- A. Enforcement of this chapter shall be by citation from the Fire Department and Police Department.¹
- B. A person may register a complaint regarding an alleged violation pursuant to this chapter to initiate enforcement with the Fire or Police Department.
- C. The designated enforcement agencies may inspect an establishment for compliance with this chapter.

§ 86-10. Violations.

It is unlawful for a person who owns, manages, operates or otherwise controls the use of premises subject to regulation under this chapter to violate its provisions. The owner, manager or operator of premises subject to regulation shall not be subject to a penalty if a person on the premises is in violation of this chapter as long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the person that the person is in violation.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 86-11. Violations and penalties.

A person 18 years of age or older who violates a provision of this chapter is subject to:

- A. A fine not to exceed \$100 for the first violation;
- B. A fine not to exceed \$200 for the second violation within any consecutive twelve-month period of the first violation; and
- C. A fine not to exceed \$500 for the third and each subsequent violation within any consecutive twelve-month period of a previous violation.

§ 86-12. Nonretaliation; nonwaiver.

- A. A person or employer shall not discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or patron because that employee, applicant or patron exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.