

**CHAPTER 6**  
**SMOKE-FREE AIR**

**Authority**

N.J.S.A. 26:1A-15 and 16 through 19, and 26:3D-55 et seq., particularly 26:3D-64.

**Source and Effective Date**

R.2007 d.170, effective May 21, 2007.  
See: 38 N.J.R. 1925(a), 38 N.J.R. 3095(a), 39 N.J.R. 2027(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 6, Smoke-Free Air, expires on November 17, 2014. See: 46 N.J.R. 1514(a).

**Chapter Historical Note**

Chapter 6, Qualifications of Superintendents or Operators of Public Water Supply Systems, Water Treatment Plants and Sewage Treatment Plants was adopted January 7, 1969, and became effective October 1, 1969.

Chapter 6, Qualifications of Superintendents or Operators of Public Water Supply Systems, Water Treatment Plants and Sewage Treatment Plants, was repealed by R.2001 d.18, effective January 2, 2001. See: 32 N.J.R. 3367(a), 33 N.J.R. 45(c).

Chapter 6, Smoke-Free Air, was adopted as new rules by R.2007 d.170, effective May 21, 2007. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 6, Smoke-Free Air, was scheduled to expire on May 21, 2014. See: 43 N.J.R. 1203(a).

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## SUBCHAPTER 1. GENERAL PROVISIONS

**8:6-1.1 Purpose**

The purpose of this chapter is to implement P.L. 2005, c. 383, the New Jersey Smoke-Free Air Act, N.J.S.A. 26:3D-55 et seq.

**8:6-1.2 Definitions**

(a) The following words and terms are defined in the Act at N.J.S.A. 26:3D-55 et seq., particularly 26:3D-57 and 59, and are used in this chapter as defined in the Act:

“Bar”;  
 “Casino”;  
 “Casino simulcasting facility”;  
 “Cigar bar”;  
 “Cigar lounge”;  
 “Indoor public place”;  
 “Person having control of an indoor public place”;  
 “Smoking”;  
 “Tobacco retail establishment”; and  
 “Workplace”.

(b) As used in this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

“Backstream” means recirculate, as that term is defined in the mechanical subcode of the New Jersey State Uniform Construction Code at N.J.A.C. 5:23-3.20.

“Commission” means the New Jersey Casino Control Commission as that term is defined at N.J.S.A. 5:12-14.

“Department” means the Department of Health and Senior Services.

“Establishment” means a place of business, commerce or other service-related activity, whether public or privately-owned or operated on a for-profit or nonprofit basis.

“Exterior area” means an area that is not structurally enclosed.

1. Potential examples of exterior areas, depending upon whether an area is structurally enclosed, can include balconies, courtyards, decks, gazebos, parking lots, patios, porches, sidewalks, terraces, or yards.

“Evenly distributed” means, with respect to the openings used to qualify a space as not structurally enclosed, the area of the smallest opening is no less than 20 percent of the total opening area necessary to qualify the space as being not structurally enclosed.

“Generally accessible to the public,” when used to describe an establishment, means:

1. Persons other than persons having control of an establishment are permitted or required to enter the establishment, for any purpose, regardless of whether the entry is occasional or routine; or

2. Persons other than persons having control of the establishment perform a service or labor at the establishment, regardless of whether the service or labor is performed for profit or remuneration or on a non-profit or volunteer basis, and regardless of whether the service or labor is performed occasionally or routinely.

“Incidental” means minor and occasional.

1. The sale of food or beverages for on-site consumption is a not an incidental sale of other products.

“Indoor Environments Program” means the program by that name established in the Public Health Services Branch of the Department, the mailing address of which is: Indoor Environments Program, Consumer and Environmental Health Services, Public Health Services Branch, New Jersey Department of Health and Senior Services, PO Box 369, Trenton, NJ 08625-0369.

“Local board of health” shall have the meaning provided at N.J.A.C. 8:52-2.1.

“Local health agency” shall have the meaning provided at N.J.A.C. 8:52-2.1.

1. A searchable database and downloadable list of local health agencies, the municipalities over which they have jurisdiction, and their contact information is available at <http://nj.gov/health/lh/directory/lhdselectcounty.htm>.

2. Contact information for local health agencies is available in the government listings section (blue pages) of most telephone directories.

3. The Department shall provide contact information for local health agencies upon request made by telephone to (609) 292-4993 or in writing to the Office of Public Health Infrastructure, PO Box 360, Trenton, NJ 08625-0360.

“New Jersey design professional” means:

1. A person licensed in New Jersey as a registered architect pursuant to Title 45 of the New Jersey Statutes, particularly N.J.S.A. 45:3-1 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 13:27; or

2. A person licensed in New Jersey as a professional engineer pursuant to Title 45 of the New Jersey Statutes, particularly N.J.S.A. 45:8-27 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 13:40.

“New Jersey-licensed certified public accountant” means a person licensed in New Jersey as a certified public accountant pursuant to Title 45 of the New Jersey Statutes, particularly N.J.S.A. 45:2B-42 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 13:29.

“Not structurally enclosed” means:

1. There are evenly distributed openings on at least two or more sides, or on at least one side and overhead; and

2. The total area of the openings is at least 40 percent of the total area of the perimeter walls.

“Opening” means a door, a window, a louver, a skylight, a food or beverage pass-through, or any aperture that allows the exchange of air between a building interior and the outside atmosphere.

1. An opening remains an “opening” when screening is in place, such as at a screened-in porch, but not, if or when the screening is replaced by a material that obstructs airflow such as a storm window, glass, wood, awning material, tent material, or plastic or polyethylene sheeting such as Visqueen.

2. An exterior wall or portion thereof consisting of glass, wood, awning material, tent material, or plastic or polyethylene sheeting such as Visqueen is not an “opening.”

“Person having control of an establishment” means the owner or operator of the establishment.

“School” means public and private elementary and secondary schools.

“Tobacco product” shall have the meaning provided in the Tobacco Products Wholesale Sales and Use Tax Act, N.J.S.A. 54:40B-1 et seq., particularly N.J.S.A. 54:40B-2.

## SUBCHAPTER 2. INDOOR PUBLIC PLACE OR WORKPLACE

### 8:6-2.1 Indoor public places and workplaces subject to the Act unless exemption applies; more stringent provisions authorized

(a) Pursuant to N.J.S.A. 26:3D-58, an indoor public place or a workplace is subject to the Act and this chapter, except as provided in the Act, particularly at N.J.S.A. 26:3D-59, and this chapter.

(b) An establishment is an indoor public place if it is structurally enclosed and generally accessible to the public.

(c) This chapter shall not be construed to limit the ability of an owner or operator of an establishment from establishing restrictions on or prohibitions against smoking at the establishment that are greater than those provided in the Act and this chapter.

### 8:6-2.2 Smoking in indoor public place or workplace; time irrelevant

(a) The time of entry into an establishment by workers or members of the public is irrelevant to the issue of whether the

establishment is generally accessible to the public and/or a workplace.

1. For example, the fact that janitorial personnel may enter a structurally enclosed establishment during times other than those times when smoking would occur in the establishment does not matter; the establishment would be a workplace and/or an indoor public place at which smoking is prohibited.

(b) The fact that an establishment is not always structurally enclosed is irrelevant to the issue of whether smoking is prohibited at the establishment if the establishment is occasionally or seasonally an indoor public place and/or a workplace.

1. For example, the fact that smoking would occur in an establishment that is generally accessible to the public in the summer when screens would be in place in openings that would qualify the establishment as “not structurally enclosed,” and that smoking would not occur in winter when storm windows are in place is irrelevant; if the openings are not permanently open, the area is an indoor public place and/or a workplace at which smoking is prohibited at all times.

### 8:6-2.3 Exterior area of indoor public place or a workplace

(a) Subject to (b) below, smoking is prohibited at an exterior area if smoking in the exterior area results in migration, seepage, or recirculation of smoke to an indoor public place or a workplace at which smoking is prohibited.

(b) Subsection (a) above shall not apply to a designated outdoor smoking area established by the administrator of a correctional facility in accordance with N.J.A.C. 10A:14-2.6, provided that this exception shall not apply to smoking areas established for the exclusive use of persons other than inmates.

## SUBCHAPTER 3. REGISTRATION: CIGAR BARS AND CIGAR LOUNGES

### 8:6-3.1 Procedure for initial registration; form

(a) A person having control of an establishment seeking to register the establishment or an area within the establishment as an exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59 shall submit the following to the local health agency with jurisdiction over the municipality in which the proposed exempt cigar bar or cigar lounge is located:

1. The completed and fully executed application form provided at chapter Appendix A, incorporated herein by reference;

2. A copy of deeds or leases for the premises at which a proposed exempt cigar bar or cigar lounge is located held by the applicant or its predecessors in title or leasehold

showing the occupancy of the premises as a cigar bar or cigar lounge as of December 31, 2004, to the date of application;

3. A copy of the certificate of occupancy for the premises as of December 31, 2004, and/or thereafter, as applicable, if the issuance of a certificate of occupancy was or is a condition of occupancy pursuant to applicable local law, as of December 31, 2004, and/or thereafter;

4. The sworn and notarized affidavit of a New Jersey licensed certified public accountant attesting that the proposed exempt cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, excluding sales from vending machines, for the calendar year ending December 31, 2004, and for each succeeding calendar year ending December 31 of the year preceding the date of the application;

i. The information contained in the application and affidavit required pursuant to (a)1 and 4 above shall be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury; and

5. If the proposed exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act, the sworn and notarized affidavit of a New Jersey design professional attesting that:

i. The proposed exempt cigar bar or cigar lounge is in an area within the location that is enclosed by:

- (1) Solid walls or windows;
- (2) A ceiling; and
- (3) A solid door; and

ii. The ventilation system of the proposed exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the proposed smoking area would not be recirculated to the nonsmoking areas and smoke would not be backstreamed into the nonsmoking areas.

#### **8:6-3.2 Local health agency conferral with permit entity; access for inspection**

(a) A local health agency to which an initial application for registration of a proposed exempt cigar bar or cigar lounge has been made shall confer with the local construction code enforcing agency with jurisdiction over the municipality in which the proposed exempt cigar bar or cigar lounge is located to ascertain whether, since December 31, 2004, to the date of the application, the proposed exempt cigar bar or cigar lounge has expanded in size and/or whether a permit to expand in size has been made.

(b) Upon reviewing any documents or information that the applicant submits pursuant to N.J.A.C. 8:6-3.1, the local

health agency may require the applicant to provide the local health agency and, at the option of the local health agency, any experts retained by the local health agency, with access to inspect one or more of the following:

1. The physical configuration of the establishment at which the proposed exempt cigar bar or cigar lounge is located;
2. The ventilation systems at the establishment; and
3. Records of sales of tobacco products and/or rentals of on-site humidors occurring at the establishment for the periods addressed in the application.

(c) The local health agency shall schedule any inspections required pursuant to (b) above so that the inspections occur within 20 business days of the local health agency's receipt of a completed application and supporting documentation.

Amended by R.2007 d.320, effective October 15, 2007.  
See: 39 N.J.R. 2182(a), 39 N.J.R. 4395(b).

In the introductory paragraph of (b), deleted “, and at the expense of,” following “retained by”, and deleted “, at no cost to the applicant” from the end.

#### **8:6-3.3 Local health agency review of application; issuance of initial registration**

(a) In determining whether to register a proposed exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59, a local health agency to which an initial application for registration is made pursuant to N.J.A.C. 8:6-3.1 shall review the application, the supporting documentation submitted pursuant to N.J.A.C. 8:6-3.1, the information the local health agency receives pursuant to N.J.A.C. 8:6-3.2(a), and the results of any inspections conducted pursuant to N.J.A.C. 8:6-3.2(b).

1. In addition, the local health agency shall consider any applicable local ordinance that provides restrictions on or prohibitions against smoking equivalent to or greater than those provided under the Act and this chapter, in accordance with N.J.S.A. 26:3D-63.

(b) The local health agency shall grant an initial application for registration of a proposed exempt cigar bar or cigar lounge if the local health agency determines that:

1. The proposed exempt cigar bar or cigar lounge has not expanded in size since December 31, 2004, to the date of the application;
2. The proposed exempt cigar bar or cigar lounge has not changed its location since December 31, 2004, to the date of the application;
3. The proposed exempt cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, excluding sales from vending machines, for the calendar year ending December 31, 2004, and for each succeeding calendar year ending December 31 of the year preceding the date of the application;

4. If the proposed exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act:

i. The proposed exempt cigar bar or cigar lounge is in an area within the establishment that is enclosed by:

- (1) Solid walls or windows;
- (2) A ceiling; and
- (3) A solid door; and

ii. The ventilation system of the proposed exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas; and

5. There is no applicable local ordinance pursuant to (a)1 above that prohibits granting the application for registration.

(c) If the local health agency finds that a proposed exempt cigar bar or cigar lounge meets the conditions for registration in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed application and any required supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.2(b), shall:

1. Issue a written notice to the applicant advising the applicant of the approval of the request for registration; and

2. Place a notice of registration of the exempt cigar bar or cigar lounge on file in the official records of the local board of health with jurisdiction over the municipality in which the exempt cigar bar or cigar lounge is located.

(d) The registration of an exempt cigar bar or cigar lounge shall expire on June 30 of the year following the year of issuance.

(e) If the local health agency finds that a proposed exempt cigar bar or cigar lounge fails to meet the conditions for registration in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed application and any supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.2(b), shall issue a written notice to the applicant advising the applicant as to the basis or bases for denial.

#### 8:6-3.4 Procedure for renewal of registration

(a) A person having control of an establishment seeking to renew the registration of an exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59 shall submit the following, subject to (b) below, as applicable, to the local health agency with jurisdiction over the municipality in which the proposed exempt cigar bar or cigar lounge is located by no later than

April 15 of the year in which the existing registration is to expire:

1. The completed registration renewal application form provided at chapter Appendix B, incorporated herein by reference;

2. A copy of the deed or lease for the premises at which a proposed exempt cigar bar or cigar lounge is located held by the applicant or its predecessors in title or leasehold showing the occupancy of the premises as a cigar bar or cigar lounge from the date of the last registration renewal to the date of the application;

3. A copy of the certificate of occupancy for the premises from the date of the last registration renewal to the date of the application, to the extent the issuance of a certificate of occupancy was a condition of occupancy pursuant to local law during the period since the date of the last registration renewal; and

4. The sworn and notarized affidavit of a New Jersey licensed certified public accountant attesting that the exempt cigar bar or cigar lounge generated 15 percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, excluding sales from vending machines, during the calendar year ending December 31 of the year preceding the date of the registration renewal application.

i. The information contained in the affidavit required pursuant to (a)4 above shall be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury.

(b) If the proposed exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act, the applicant shall submit, in addition to information required pursuant to (a) above:

1. The applicant's sworn and notarized statement in the appropriate location on the registration renewal application form that there has been no modification to the enclosure, ventilation system, or location of cigar bar or cigar lounge since the date of the last registration; and/or

2. If there has been any modification to the enclosure or ventilation system of the exempt cigar bar or cigar lounge, the sworn and notarized affidavit of a New Jersey design professional attesting that, with respect to any modification to the enclosure or ventilation system to occurring since the date of the last registration, the ventilation system of the exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas, and the exempt cigar bar or cigar lounge remains in an area within the location that is enclosed by:

- i. Solid walls or windows;

- ii. A ceiling; and
- iii. A solid door.

### **8:6-3.5 Local health agency conferral with permit entity as to changes since initial registration**

(a) A local health agency to which an application for renewal of the registration of an exempt cigar bar or cigar lounge has been made shall confer with the local construction code enforcing agency with jurisdiction over the municipality in which the exempt cigar bar or cigar lounge is located to ascertain whether the exempt cigar bar or cigar lounge has expanded in size during the period beginning on the date of the last registration to the date of the application.

(b) Upon reviewing an application for renewal of the registration of an exempt cigar bar or cigar lounge, any supporting documentation, and the information the local health agency receives pursuant to (a) above, the local health agency may require the applicant to provide the local health agency, and, at the option of the local health agency, any experts retained by the local health agency, access to inspect one or more of the following:

1. The physical configuration of the establishment at which the proposed exempt cigar bar or cigar lounge is located;
2. The ventilation systems at the establishment; and
3. Records of sales of tobacco products and/or rentals of on-site humidors occurring at the establishment for the periods addressed in the application.

(c) The local health agency shall schedule any inspections required pursuant to (b) above so that the inspections occur within 20 business days of the local health agency's receipt of a completed application and supporting documentation.

Amended by R.2007 d.320, effective October 15, 2007.  
See: 39 N.J.R. 2182(a), 39 N.J.R. 4395(b).

In the introductory paragraph of (b), deleted "and at the expense of," following "retained by", and deleted "at no cost to the applicant" from the end.

### **8:6-3.6 Local health agency review of registration renewal application; issuance of registration renewal**

(a) In determining whether to renew the registration of an exempt cigar bar or cigar lounge pursuant to N.J.S.A. 26:3D-59, a local health agency to which a registration renewal application is made pursuant to N.J.A.C. 8:6-3.4 shall review the application, the supporting documentation submitted pursuant to N.J.A.C. 8:6-3.4, the information the local health agency receives pursuant to N.J.A.C. 8:6-3.5(a), and the results of any inspections conducted pursuant to N.J.A.C. 8:6-3.5(b).

1. In addition, the local health agency shall consider any applicable local ordinance that provides restrictions on

or prohibitions against smoking equivalent to or greater than those provided under the Act and this chapter, in accordance with N.J.S.A. 26:3D-63.

(b) The local health agency shall renew the registration of an exempt cigar bar or cigar lounge if the local health agency determines that:

1. The exempt cigar bar or cigar lounge has not expanded in size since the last registration to the date of the application;

2. The exempt cigar bar or cigar lounge has not changed its location since the last registration to the date of the application;

3. Sales of tobacco products and/or rentals of on-site humidors at the location of the exempt cigar bar or cigar lounge totaled at least 15 percent or more of the total annual gross income of the proposed exempt cigar bar or cigar lounge, excluding sales from vending machines, during the calendar year ending December 31 preceding the date of the registration renewal application;

4. If the exempt cigar bar or cigar lounge is located within an establishment at which smoking is prohibited pursuant to the Act:

- i. The exempt cigar bar or cigar lounge is in an area within the establishment that is enclosed by:

- (1) Solid walls or windows;
- (2) A ceiling; and
- (3) A solid door; and

- ii. The ventilation system of the exempt cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment so that air from the smoking area is not recirculated to the nonsmoking areas and smoke is not backstreamed into the nonsmoking areas; and

5. There is no applicable local ordinance pursuant to (a)1 above that prohibits renewing the application for registration.

(c) If the local health agency finds that an exempt cigar bar or cigar lounge meets the conditions for registration renewal in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed application and any required supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.5(b), shall:

1. Issue a written notice to the applicant advising the applicant of the approval of the request for registration renewal; and

2. Place a notice of registration renewal of the exempt cigar bar or cigar lounge on file in the official records of the local board of health with jurisdiction over the munic-



ipality in which the exempt cigar bar or cigar lounge is located.

(d) If the local health agency finds that an exempt cigar bar or cigar lounge fails to meet any of the conditions for registration renewal in (b) above, the local health agency, within 20 business days of the local health agency's receipt of a completed registration renewal application and any supporting documentation, and the conclusion of any inspections the local health agency may require pursuant to N.J.A.C. 8:6-3.2(b), shall issue a written notice to the applicant advising the applicant as to the basis or bases for denial.

#### **8:6-3.7 Maintenance of enclosure**

(a) An exempt cigar bar or cigar lounge registered pursuant to this subchapter and N.J.S.A. 26:3D-59 that is located within an establishment at which smoking is prohibited pursuant to the Act shall ensure that:

1. The solid door of the cigar bar or cigar lounge remains closed at all times except when the door is in use for entry to and egress from the cigar bar or cigar lounge;

i. The use of a self-closing door is recommended for this purpose; and

2. The ventilation system of the cigar bar or cigar lounge at all times is maintained in operable condition to ensure that air from the cigar bar or cigar lounge is separately exhausted from the nonsmoking areas of the establishment and not recirculated to the nonsmoking areas, and that smoke is not backstreamed into the nonsmoking areas.

### **SUBCHAPTER 4. TOBACCO RETAIL ESTABLISHMENT**

#### **8:6-4.1 Annual provision of notice of claim of exemption and retail sale income verification**

(a) An establishment that is an indoor public place or a workplace that intends to claim that the establishment is exempt from the Act as a tobacco retail establishment within the meaning of N.J.S.A. 26:3D-57 and 59 shall file, by April 15 of each year, the form of notice provided at chapter Appendix C, incorporated herein by reference, with the local health agency with jurisdiction over the municipality in which the establishment is located.

1. The information contained in the notice required pursuant to (a) above shall be subject to reporting to and auditing by the Division of Taxation of the New Jersey Department of the Treasury.

#### **8:6-4.2 Exemption not applicable in certain circumstances**

(a) With respect to an establishment that otherwise qualifies as a tobacco retail establishment, if the establishment is

within or part of an indoor public place or a workplace, such as a retail store within a shopping mall, the exemption provided at N.J.S.A. 26:3D-59b shall not apply to the establishment unless the establishment is enclosed by solid walls or windows, a ceiling, and a solid door, and equipped with a ventilation system that is separately exhausted from the indoor public place or workplace in which the tobacco retail establishment is located, so that air from the tobacco retail establishment is not recirculated to the indoor public place or workplace and smoke is not backstreamed into the indoor public place or workplace, and provided that:

1. The solid door of the tobacco retail establishment remains closed at all times except when the door is in use for entry to and egress from the tobacco retail establishment;

i. The use of a self-closing door is recommended for this purpose; and

2. The ventilation system of the tobacco retail establishment at all times is maintained in operable condition to ensure that air from the tobacco retail establishment is separately exhausted from and not recirculated to the nonsmoking areas of the indoor public place or workplace in which the tobacco retail establishment is located, and that smoke is not backstreamed into the nonsmoking areas.

(b) The exemption provided at N.J.S.A. 26:3D-59b is not available to the extent an applicable local ordinance restricts or prohibits its availability, in accordance with N.J.S.A. 26:3D-63.

#### **8:6-4.3 Local health agency conferral with permit entity; access for inspection**

(a) Upon reviewing an executed form of notice and any supporting documentation or information an entity submits pursuant to N.J.A.C. 8:6-4.1, a local health agency may require the entity to provide the local health agency and, at the option of the local health agency, any experts retained by the local health agency, with access to inspect one or more of the following:

1. Records of sales of tobacco products and accessories, and records of sales of other products; and

2. With respect to an establishment that is within or part of an indoor public place or a workplace:

i. The physical configuration of the establishment at which the proposed exempt tobacco retail establishment is located; and

ii. The ventilation systems at the establishment.

(b) The local health agency shall schedule any inspections it may require pursuant to (a) above so that the inspections occur within 20 business days of the local health agency's receipt of a completed notice and supporting documentation.

New Rule, R.2007 d.320, effective October 15, 2007.  
See: 39 N.J.R. 2182(a), 39 N.J.R. 4395(b).

## SUBCHAPTER 5. CASINOS AND CASINO SIMULCASTING FACILITIES

### 8:6-5.1 Area within the perimeter of a casino or a casino simulcasting facility

(a) Establishments that are completely surrounded by a casino that meets the requirements of N.J.S.A. 26:3D-59e(1) are within the perimeter of a casino for the purpose of the exemption the Act affords casinos pursuant to N.J.S.A. 26:3D-59e.

1. The perimeter of a casino is the casino boundary delineation on the floor plan a casino licensee files with the Commission as part of its operation certificate pursuant to N.J.A.C. 19:43-7.3(b)1, subject to Commission approval.

2. For an establishment to be “completely surrounded” by a casino, a casino shall exist on all sides of, that is, in a 360-degree radius around, the establishment, provided the casino meets the requirements of N.J.S.A. 26:3D-59e(1).

(b) Establishments that are completely surrounded by a casino simulcasting facility that meets the requirements of N.J.S.A. 26:3D-59e(2) are within the perimeter of a casino simulcasting facility for the purpose of the exemption the Act affords casino simulcasting facilities pursuant to N.J.S.A. 26:3D-59e.

1. The perimeter of a casino simulcasting facility is the casino simulcasting facility boundary delineation on the floor plan a casino licensee files with the Commission as part of its operation certificate pursuant to N.J.A.C. 19:43-7.3(b)1, subject to Commission approval.

2. For an establishment to be “completely surrounded” by a casino simulcasting facility, a casino simulcasting facility shall exist on all sides of, that is, in a 360-degree radius around, the establishment, provided the casino simulcasting facility meets the requirements of N.J.S.A. 26:3D-59e(2).

### 8:6-5.2 Temporary expansion of casino or a casino simulcasting facility

If a casino hotel obtains a Commission-approved resolution authorizing the amendment of the casino hotel’s operation certificate for the temporary expansion of a casino or a casino simulcasting facility, the temporarily expanded space is not a “casino” or a “casino simulcasting facility” for the purpose of the exemption the Act affords casino and casino simulcasting facilities pursuant to N.J.S.A. 26:3D-59e.

### 8:6-5.3 Designation of smoking and non-smoking areas

(a) Casino licensees shall place signage indicating that smoking is permitted at each entrance to an area at which smoking is permitted from an area at which smoking is not permitted.

(b) Casino licensees shall place signage indicating that smoking is not permitted at each entrance to an area at which smoking is not permitted from an area at which smoking is permitted.

(c) The signage a casino licensee uses to implement this section shall meet the technical requirements provided at N.J.S.A. 26:3D-61.

## SUBCHAPTER 6. SIGNAGE DESIGNATING SMOKING AND NONSMOKING AREAS

### 8:6-6.1 Acceptable forms of signage designating smoking and nonsmoking areas

(a) Signs containing the content provided at chapter Appendices D or E, incorporated herein by reference, are acceptable to meet the content requirement for the signs N.J.S.A. 26:3D-61 requires a person having control of an indoor public place or workplace at which smoking is prohibited pursuant to the Act to post at every public entrance to the indoor public place or workplace indicating that smoking is prohibited.

(b) Signs containing the content provided at either chapter Appendix F or G, incorporated herein by reference, are acceptable to meet the content requirement for the signs N.J.S.A. 26:3D-61 requires a person having control of an indoor public place or workplace at which smoking is permitted pursuant to the Act to post in those areas of the indoor public place or workplace at which smoking is permitted.

(c) This section shall not be construed to prohibit a person having control of an establishment required to post signage pursuant to the Act to post another form of the required signs, provided the signs meet the requirements of N.J.S.A. 26:3D-61.

## SUBCHAPTER 7. SCHOOL BUILDINGS AND GROUNDS

### 8:6-7.1 Purpose

The purpose of this subchapter is to implement the prohibition against smoking in school buildings and on school grounds pursuant to N.J.S.A. 26:3D-58.

### 8:6-7.2 Smoking prohibited in school buildings and on school grounds

(a) Pursuant to N.J.S.A. 26:3D-58b, smoking is prohibited in school buildings and on school grounds.

(b) As used in (a) above, “school buildings” and “school grounds,” means and includes, with respect to public and nonpublic elementary and secondary schools:



1. Land, portions of land, structures, buildings, and vehicles, owned, operated or used for the provision of academic or extracurricular programs sponsored by a school or a community provider and structures that support these buildings, such as school wastewater treatment facilities, generating facilities, and other central service facilities including, but not limited to, kitchens and maintenance shops;

2. Athletic stadiums, swimming pools, any associated structures or related equipment tied to such facilities in-

cluding, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building or facility used solely for school administration;

3. Playgrounds, and recreational places owned by local municipalities, private entities or other individuals during those times when the school district has exclusive use of a portion of such land; and

4. Certain faculty or administrator residences on school grounds as provided in N.J.A.C. 8:6-8.1(b).

## SUBCHAPTER 8. RESIDENCES

### 8:6-8.1 Certain residences not exempt

(a) A faculty or administrator residence on school grounds is a private residence at which smoking is permitted for the purpose of the exemption the Act affords private residences pursuant to N.J.S.A. 26:3D-59d, unless the residence is:

1. Used in whole or in part as a workplace of the school by persons other than those who reside there (for example, a place at which school personnel are required to perform secretarial, security, maintenance, or housekeeping work);
2. Generally accessible to the public;
3. Used by students (for example, for tutoring, counseling, or extracurricular purposes); or
4. Located within a student dormitory.

(b) This section is not to be construed to prevent the owner or operator of a residence on school grounds from prohibiting smoking in the residence, in accordance with N.J.S.A. 26:3D-63.

## SUBCHAPTER 9. ENFORCEMENT

### 8:6-9.1 Enforcement against individuals

(a) A person having control of an indoor public place or workplace shall order a person smoking in violation of the Act and this chapter (person smoking illegally) to comply with the Act and this chapter, and may elect to provide the person smoking illegally with a copy of the notice provided at chapter Appendix H, incorporated herein by reference.

(b) If, after having been ordered to comply with the Act and this chapter in accordance with (a) above, a person smoking illegally continues to violate the Act and this chapter, the person having control of the indoor public place or workplace:

1. Shall order the departure and removal from the indoor public place or workplace of the person smoking illegally; and
2. In the discretion of the person having control of the indoor public place or workplace, may request the assistance of law enforcement or peace officers with jurisdiction over the indoor public place or workplace to accomplish this departure and removal.

(c) A person may file a complaint against a person smoking illegally in accordance with N.J.S.A. 26:3D-62 by:

1. Contacting the local health agency with jurisdiction over the indoor public place or workplace and by adhering to complaint procedures each local health agency shall establish;

2. Filing a complaint directly with the municipal court with jurisdiction over the establishment, or

3. Filing the form of complaint at chapter Appendix I, incorporated herein by reference, with the Indoor Environments Program.

(d) This section shall not be construed to impair the ability of law enforcement or peace officers with jurisdiction to charge a person under any other applicable law, including N.J.S.A. 2C:33-13.

### 8:6-9.2 Enforcement against person having control of an indoor public place or workplace

(a) Any person may file a complaint against a person having control of an indoor public place or workplace who violates or fails or refuses to comply with or enforce the Act and this chapter by:

1. Contacting the local health agency with jurisdiction over the indoor public place or workplace and by adhering to complaint procedures each local health agency shall establish;

2. Filing a complaint directly with the municipal court with jurisdiction over the establishment, or

3. Filing the form of complaint at chapter Appendix I, with the Indoor Environments Program.

### 8:6-9.3 Procedure for anonymous request for investigation

(a) A person may submit an anonymous request for the performance of an investigation of an indoor public place or workplace for alleged violation of, or failure or refusal to comply with or enforce, the Act and this chapter by:

1. Contacting the local health agency with jurisdiction over the indoor public place or workplace and by adhering to anonymous investigation request procedures each local health agency shall establish; or

2. Filing the form of request for investigation at chapter Appendix J incorporated herein by reference, with the Indoor Environments Program.

(b) An anonymous request for investigation shall not be evidence of a violation of, or a failure or refusal to comply with or enforce, the Act and this chapter.

### 8:6-9.4 Entry upon premises by enforcing entity

(a) A person having control of an establishment shall permit full access to the establishment, for the purposes of

examination, inspection, investigation, and enforcement of the Act and this chapter, to:

1. Representatives of a local health agency with jurisdiction over the establishment;
2. Representatives of the Department; and
3. Any experts retained by, and at the expense of, the local health agency of the Indoor Environments Program.

#### **8:6-9.5 Fines for violations**

(a) Pursuant to N.J.S.A. 26:3D-62, fines for violations of the Act and this chapter are as follows:

1. \$250.00 for a first offense;

2. \$500.00 for a second offense; and
3. \$1,000 for each subsequent offense.

### **SUBCHAPTER 10. FORMS**

#### **8:6-10.1 Forms**

Single copies suitable for photocopying of the forms provided at Appendices A through J are available upon request to the Indoor Environments Program and are available for download from the forms internet web page of the Department at <http://web.doh.state.nj.us/forms>.

APPENDIX G

# **PERMITIDO FUMAR**



**New Jersey Smoke-Free Air Act  
N.J.S.A. 26:3D-55**

## APPENDIX H

*State of New Jersey*

## DEPARTMENT OF HEALTH AND SENIOR SERVICES

PO BOX 360  
TRENTON, N.J. 08625-0360JON S. CORZINE  
*Governor*[www.nj.gov/health](http://www.nj.gov/health)FRED M. JACOBS, M.D., J.D.  
*Commissioner*

April 15, 2006

NOTICE

On April 15, 2006, the "New Jersey Smoke-Free Air Act" (Act), N.J.S.A. 26:3D-55 et seq., took effect. The Act prohibits smoking in an indoor public place or workplace. The Act also prohibits smoking in any building or on the grounds of a public or nonpublic elementary or secondary school, regardless of whether the area is indoors or outdoors.

The Act and the Smoke-Free Air Rules of the Department of Health and Senior Services at N.J.A.C. 8:6 implementing the Act require this establishment to direct a person smoking in violation of the Act to stop smoking. The rules further require this establishment to remove from the premises any person who continues to smoke in violation of the Act after having been directed to stop smoking, and to enlist the assistance of local law enforcement or peace officers, if necessary, to assist in the removal.

Persons who violate the Act are subject to a complaint being filed against them and being summoned to appear in the municipal court of this jurisdiction. Persons found to be in violation of the Act are subject to fines and penalties established by the Act of \$250 for a first offense, \$500 for a second offense, and \$1,000 for each subsequent offense.

Fred M. Jacobs, M.D., J.D., Commissioner  
New Jersey Department of Health and Senior ServicesOC-59  
AUG 07

Administrative correction.  
See: 39 N.J.R. 3916(a).



## APPENDIX I

**New Jersey Department of Health and Senior Services  
Consumer and Environmental Health Services  
Indoor Environments Program  
PO Box 369  
Trenton, NJ 08625-0369**

Date Filed

## NJ SMOKE-FREE AIR ACT / COMPLAINT

Information contained in this form is subject to disclosure and public access pursuant to N.J.S.A. 47:1A-1, the "Open Public Records Law."

If you would like to make an anonymous request for investigation, you can do so by contacting your local health agency. You can find out which local health agency would have jurisdiction by searching the list of local health agencies available at <http://nj.gov/health/lh/directory/lhdselectcounty.htm>, or by calling (609) 292-4993.

SECTION I - ESTABLISHMENT INFORMATION					
1. Name of Establishment			2. Source(s) of Smoking Violation: <i>(Check all that apply)</i> <input type="checkbox"/> Employee(s)/Worker(s) <input type="checkbox"/> Customer(s)/Visitor(s) <input type="checkbox"/> Owner/Operator (failure to enforce) <input type="checkbox"/> Unknown/Not Sure <input type="checkbox"/> Other (specify): _____		
Street Address					
City	State	Zip Code			
3. Date and Time of Smoking Violation		4. Were No Smoking or Smoking Prohibited signs posted in or near the location of the smoking violation?			
<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown/Not Sure			
5. Brief Description of Smoking Violation ( <i>include the name of any supervisor/individual in charge that you spoke with concerning the smoking violation</i> ):          					
6. If this is a complaint about a smoking violation in your workplace, provide the name, title or position, and telephone number of the official in charge of smoking policy for your workplace:					
SECTION II - COMPLAINANT INFORMATION					
7. Name of Complainant		10. Status of Complainant			
8. Address		<input type="checkbox"/> Employee/Worker <input type="checkbox"/> Owner			
		<input type="checkbox"/> Customer <input type="checkbox"/> Operator			
9. City, State, Zip Code		<input type="checkbox"/> Visitor or Guest			
		<input type="checkbox"/> Other (specify): _____			
		11. Telephone Number		12. Best Time to Call	
CERTIFICATION: <i>I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.</i>					
13. Signature				14. Date	

### NJ SMOKE-FREE AIR ACT / COMPLAINT (Continued)

15. Name of Other Complainant(s) or Witness(es) *		18. Status of Complainant <input type="checkbox"/> Employee/Worker <input type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Operator <input type="checkbox"/> Visitor or Guest <input type="checkbox"/> Other (specify): _____	
16. Address			
17. City, State, Zip Code		19. Telephone Number	20. Best Time to Call
<b>CERTIFICATION:</b> <i>I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.</i>			
21. Signature		22. Date	
23. Name of Other Complainant(s) or Witness(es) *		26. Status of Complainant <input type="checkbox"/> Employee/Worker <input type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Operator <input type="checkbox"/> Visitor or Guest <input type="checkbox"/> Other (specify): _____	
24. Address			
25. City, State, Zip Code		27. Telephone Number	28. Best Time to Call
<b>CERTIFICATION:</b> <i>I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.</i>			
29. Signature		30. Date	

\* Attach additional sheet as needed and provided all requested information for any additional complainants/witnesses.

**New Jersey Department of Health and Senior Services  
Consumer and Environmental Health Services  
Indoor Environments Program  
PO Box 369  
Trenton, NJ 08625-0369**

Date Filed

Information contained in this form is subject to disclosure and public access pursuant to N.J.S.A. 47:1A-1, the "Open Public Records Law."

Forward this completed form the address listed above.

Administrative correction.  
See: 39 N.J.R. 3916(a).