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**IDAPA 16
TITLE 02
Chapter 23**

16.02.23 - RULES GOVERNING INDOOR SMOKING

000. LEGAL AUTHORITY.

The Director of the Idaho Department of Health and Welfare is authorized, pursuant to Section 39-5508, Idaho Code, to adopt rules to implement the provisions of the Idaho Clean Indoor Air Act, Title 39, Chapter 55, Idaho Code. (1-1-86)

001. TITLE AND PURPOSE.

These rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16.02.23, "Rules Governing Indoor Smoking". The purpose of these rules is to effectuate the intent of the Legislature to protect the public health, comfort and environment and the rights of nonsmokers to breathe clean air by restricting smoking in public places and at public meetings to designated smoking areas. (1-1-86)

002. -- 049. (RESERVED).

050. DEFINITIONS.

For the purpose of this chapter the following terms are used, as defined herein: (12-31-91)

01. Act. The Idaho Clean Indoor Air Act, Title 39, Chapter 55, Idaho Code. (1-1-86)
02. Arena and Auditoriums. Any room, hall or building used for public gatherings. (1-1-86)
03. Bar. Any establishment or portion of an establishment where the primary function is the serving and consuming of alcoholic beverages, excluding any establishment or portion of an establishment defined as a restaurant (Subsection 050.16). Alcoholic beverages include, but are not limited to, alcoholic liquor, beer and wine. A single establishment may contain both bar and restaurant portions, according to the primary function of each portion. (12-31-91)
04. Bowling Alley. Any establishment or portion thereof used for the recreation of bowling. (1-1-86)
05. Bus. Any motor vehicle having a seating capacity of fifteen (15) or more passengers operated by a bus company for the purpose of carrying passengers or cargo for hire. (11-15-87)
06. Bus Company. Any person, group, association, partnership or corporation providing, for hire, interstate or intrastate transportation by bus. This term includes cities, counties, districts, public corporations, boards and commissions established under the laws of this state providing transportation to passengers whether or not for hire. (11-15-87)
07. Charter. A group of persons which has acquired, under a single contract and at a fixed rate, the exclusive use of a bus to travel together to a specified destination or destinations, or special excursions to one (1) specified destination. (11-15-87)
08. Director. The Director of the Idaho Department of Health and Welfare or his designee. (1-1-86)
09. Educational Facility. Any room, hall or building used for instruction, or supportive of instruction including: classrooms, libraries, auditoriums, gymnasiums, lounges, study areas, restrooms, halls, registration areas and bookstores of any private or public preschool, kindergarten, elementary school, junior high or intermediate school, high school, vocational school, college or university. This term does not include offices assigned to faculty members or administrators. (3-6-86)L
10. Elevator. Any enclosed passenger area of a mechanical device which conveys persons to different levels of a building and is generally accessible to the public. (1-1-86)
11. Grocery Stores and Stores Which Sell Food Primarily for Off-site Consumption. Any establishment

or portion thereof which sells food, at retail, for off-site consumption and is required to be licensed under Idaho Department of Health and Welfare Rules, IDAPA 16.02.19, "Rules Governing Food Sanitation Standards For Food Establishment (UNICODE)". (12-31-91)

12. Hospitals. Any facility or portion thereof required to be licensed as a hospital under the Idaho Health Facilities Licensing Act. (1-1-86)

13. Meeting Room. Any room or hall directly or indirectly advertised and offered for short term lease or rent to the public for the primary purpose of providing space for meetings. This term shall not include private social functions. (3-6-86)L

14. Nursing Home. Any facility or portion thereof required to be licensed as a nursing home under the Idaho Health Facilities Licensing Act. (1-1-86)

15. Private Social Function. An entire room or hall used for a private social function when seating arrangements are under the control of the sponsor of the function and not the proprietor or person in charge of the place. (3-6-86)L

16. Proprietor or Person in Charge. Any person, or agent of such person, who ultimately controls, governs or directs the activities within the public place. The term does not mean the owner of the property unless he ultimately governs, controls or directs the activities within the public place. (1-1-86)

17. Public Conveyance. Any air, land or water vehicle used for the transportation of persons for compensation including, but not limited to, airplanes, trains, buses, boats and taxis. The term does not include conveyances which may be used to transport employees during work. The term does not include private, noncommercial vehicles. (1-1-86)

18. Public Meeting. Any meeting open to the public, including any meeting open to the public without specific invitation or permission. (1-1-86)

19. Public Place. Any enclosed indoor area used by the general public. An area used by the general public is an area where the public can freely enter and move about without specific invitation, permission or appointment, regardless of ownership of the area. The sale of tickets for entry is not considered a specific invitation. The term includes, but is not limited to, enclosed indoor restaurants, retail stores, grocery stores and stores which sell food primarily for off-site consumption, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas and meeting rooms. (1-1-86)

20. Restaurants. Any establishment or portion of an establishment with a seating capacity of thirty (30) or more customers where the primary function is the serving and consuming of meals and any alcoholic beverages incidental thereto, excluding any establishment or portion of an establishment defined as a bar (see IDAPA 16.02.21, Subsection 050.03). A single establishment may contain both restaurant and bar portions according to the primary function of each portion. An establishment or a portion of an establishment may change from a restaurant to a bar, or from a bar to a restaurant, according to the primary function of such an establishment or portion thereof. (12-31-91)

21. Retail Stores. Any store selling goods directly to the public. (1-1-86)

22. Shopping Mall Concourse. Any enclosed indoor passageway with a width of at least twenty-five (25) feet and a ceiling height of at least fifteen (15) feet which is primarily used for pedestrian access to rows of adjoining retail stores and other public places. The term does not include theater ticket areas, restrooms, smaller passageways or adjoining retail stores and other public places. (1-1-86)

23. Smokeshops. Any retail store primarily engaged in the selling of tobacco products and smoking appliances. (1-1-86)

24. Smoking. Carrying a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other lighted smoking appliance. (1-1-86)

051. -- 099. (RESERVED).

100. SMOKING PROHIBITED.

No person shall smoke in a public place or at a public meeting except in designated smoking areas. No person shall smoke in an elevator or a nonchartered bus. (11-15-87)

101. -- 149. (RESERVED).

150. DESIGNATED SMOKING AREA.

01. Designation in General. Smoking areas in public places may be designated by proprietors or other persons in charge of public places by the posting of appropriate signs in accordance with these rules. (1-1-86)

02. Areas Which May Be Designated in Their Entirety. Private social functions, bars, bowling alleys, smokeshops, shopping mall concourses, and taxicabs may be designated as smoking areas in their entirety. (1-1-86)

03. Areas Which May Not Be Designated. The following areas may not be designated as smoking areas: (1-1-86)

a. The entirety of a public place or a public meeting, except as provided in Subsection 150.02. (12-31-91)

b. Any portion of entry or exit areas, ticket areas, registration areas, restrooms, corridors, hallways and similar areas of a public place if nonsmokers would reasonably be required to utilize such portion. (1-1-86)

c. Any elevator generally accessible to the public. (1-1-86)

d. Any portion of a public conveyance with a capacity of less than fifteen (15) persons, except as provided in Subsection 150.02. (12-31-91)

04. Minimizing the Effects of Smoke. Where smoking areas are designated, a good faith effort shall be made by the proprietor or other person in charge to minimize the effect of smoke in adjacent nonsmoking areas. (3-6-86)L

151. -- 199. (RESERVED).

200. POSTING OF SIGNS DESIGNATING SMOKING AND NONSMOKING AREAS.

01. Responsibility of Proprietor. The proprietor or other person in charge of a public place shall make reasonable efforts to prevent smoking in a public place by posting appropriate signs designating smoking and nonsmoking areas. The posting of appropriate signs is required to designate smoking areas. (1-1-86)

02. Posting of Appropriate Signs. (1-1-86)

a. Public places which are designated smoking areas in their entirety shall be posted with a sign at each entrance which includes the statement, "This establishment is a smoking area" or a similar statement. (1-1-86)

b. Public places or public meetings which are not designated smoking areas in any part shall be posted with a sign at each entrance which includes the statement, "This establishment is a no smoking area" or a similar statement. (1-1-86)

c. Entire rooms within a public place that are designated smoking areas shall be posted with a sign at each entrance to the room or inside the room which includes the statement, "This room is a smoking area" or a similar statement. (1-1-86)

d. Entire rooms within a public place that are not designated smoking areas in any part shall be posted with a sign at each entrance to the room or inside the room which includes the statement, "This is a no smoking area"

or a similar statement. (1-1-86)

e. Any portion of a room within a public place that is a designated smoking area shall be posted with a sign which includes the statement, "Smoking permitted in this area" or a similar statement. (1-1-86)

f. Any portion of a room within a public place that is not a designated smoking area shall be posted with a sign which includes the statement, "No smoking in this area" or a similar statement. (1-1-86)

g. Restaurants or other public places which have controlled seating (an employee directs patrons to seating or waiting areas) in which all patrons are directed or escorted to designated smoking areas or no smoking areas according to each patron's seated preference, may utilize a single sign at the entrance or waiting area which advises the public of the controlled seating mechanism and includes the statement, "Both smoking and no smoking areas are available, according to patron preference" or a similar statement. A restaurant or other public place which has controlled seating and posts the appropriate sign shall not be required to post those signs required by Subsections 200.02.a. through 200.02.f. (12-31-91)

h. Each entry, exit, ticket and registration area, restroom, corridor, hallway and any similar area shall be posted with a sign which includes the statement, "No Smoking" or a similar statement in any public place which has both designated smoking areas and no smoking areas. (1-1-86)

i. Each elevator generally accessible to the public shall be posted with a sign in the enclosed passenger area and each entrance to the elevator or bank of elevators which includes the statement, "No Smoking" or a similar statement. (1-1-86)

03. Sign Location, Size, Visibility. Signs shall be appropriately sized, conspicuous, legible, unobscured, and placed at a height and location so as to be easily seen and read by persons entering or within the posted area. Signs may contain information in addition to the required statement, such as the international smoking and no smoking symbols and references to the Idaho Code or the Act. The additional information shall not obscure the required statement. (12-31-91)

201. -- 249. (RESERVED).

250. WAIVERS.

01. Application and Fee. To apply for a waiver of the requirements of these rules, the proprietor or other person in charge of a public place shall complete and submit an application (attached as Appendix A of these rules) and a ten dollar (\$10) service fee to the Director, stating the grounds for the requested waiver. The Director has the right to request any other information reasonably necessary to determine the merits of the waiver application. Failure to submit such requested information may result in denial of the waiver. The application shall be addressed and mailed or delivered to:

Smoking Waivers
Idaho Department of Health and Welfare
Bureau of Preventive Medicine
The Towers - 450 West State Street
Boise, ID 83720

(12-31-91)

02. Burden on Applicant. An applicant for waiver shall have the burden to provide clear and convincing evidence to demonstrate that compelling reasons exist to issue the waiver and that the health and comfort of nonsmokers will not be significantly affected. Evidence that the health and comfort of nonsmokers will not be significantly affected may include a showing that either nonsmokers do not use the public place or constitute a very small proportion of the users of the public place or that some extraordinary means of minimizing the effects of smoke on nonsmokers exist in the public place, such as an extraordinary ventilation or a filtration system. (1-1-86)

03. Factors To Be Considered. In considering the waiver application, the Director shall consider the information supplied in the application, the prevailing smoking restrictions and other practices related to similar

public places in the community and other relevant information consistent with the public policy expressed in the Act.
(12-31-91)

04. Decision. The Director shall make a decision within a reasonable time and shall respond in writing to the applicant, indicating that the waiver application has been approved or denied and the reasons therefore. Any person aggrieved by the decision of the Director shall be afforded an opportunity for a hearing upon request therefore in writing pursuant to Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings".
(12-31-91)

251. -- 299. (RESERVED).

300. VIOLATIONS.

Any person who violates any provision of these rules is subject to the penalty provided in Section 39-5507, Idaho Code. Any violation may be reported to a law enforcement officer.
(1-1-86)

301. -- 995. (RESERVED).

996. ADMINISTRATIVE PROVISIONS.

Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 000., et seq., "Rules Governing Contested Cases and Declaratory Rulings".
(12-31-91)

997. CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Rules Governing the Protection and Disclosure of Department Records".
(12-31-91)

998. INCLUSIVE GENDER.

As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires.
(1-1-86)

999. SEVERABILITY.

Idaho Department of Health and Welfare Rules, IDAPA 16.02.23, "Rules Governing Indoor Smoking," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter.
(1-1-86)