

DECREE No...

CONGRESS OF THE REPUBLIC OF GUATEMALA

WHEREAS

The World Health Organization—WHO—has deemed that smoking is an epidemic that constitutes a world problem due to the grave consequences for public health and the increase in the use and production of cigarettes and other tobacco products around the world, particularly in developing countries, where they constitute a serious risk to health and family economies due to the burden it imposes on the poorest of families and on national health systems.

WHEREAS

Numerous scientific studies have shown that the use of tobacco and the exposure to second-hand smoke are the causes of morbidity and disability and that their effects on health occur with short and small doses of tobacco smoke exposure, and that it is necessary to take preventive and prohibitive measures to distance people from its use or exposure;

WHEREAS

Important and conclusive studies related to tobacco use and the exposure to second-hand smoke reveal that it is an important contributor to pollution in enclosed environments, causing serious harm to the health of non-smokers or second-hand smokers, who can suffer such serious illnesses as heart attacks, strokes, and chronic obstructive lung disease.

WHEREAS

The World Health Organization and the Pan American Health Organization have determined that it is of vital importance to protect non-smokers from the hazards of second-hand smoke and that one hundred percent smoke free spaces have proven to be a cost effective measure to reduce the prevalence and use of tobacco, mortality from cardiac disease and the incidence of lung cancer.

THEREFORE

In exercising the powers conferred upon it by Article 171, subparagraph a) of the Political Constitution of the Republic of Guatemala,

IT HEREBY DECREES:

The following:

LAW CREATING TOBACCO SMOKE FREE ENVIRONMENTS

Article 1. Purpose. The purpose of this law is to establish smoke free environments to preserve health and protect the non-smoking or non-tobacco using population.

Article 2. Definitions. For the application of this law, the following definitions are understood:

1. Tabaquism: Tabaquism is understood as chronic poisoning produced by tobacco addiction.
2. Passive smoker, second-hand smoker: Person of any sex or age exposed to smoke produced by tobacco, whether by his proximity to smokers or by his exposure or presence in enclosed environments where tobacco is used.
3. Second-hand smoke: Mixture of smoke exhaled by the smoker and by the lit end of the cigarette or any other tobacco product.
4. Worker or Employee: Any individual who provides an employer his material, intellectual services or both by virtue of a contract or work relationship.
5. Boss or Employer: Any individual or legal entity that uses the services of one or more workers by virtue of a contract or work relationship.
6. Clinic: Office, facility or institution that provides care or treatment for physical, psychiatric, mental or emotional illnesses or other physical, psychiatric, psychological ailments, including weight control clinics, children's homes, pain clinics or chronic illnesses, laboratories and offices for surgeons, chiropractors, psychological therapy, psychiatrists, oral surgeons, physiotherapists and all specialists within these professions. Equally included are waiting rooms, hallways, private rooms, semi-private rooms and all rooms with facilities for healthcare and recovery.
7. Place of employment or work place: Area under the control of an employer or boss, individual or legal entity, public or private, where jobs are performed for which the workers or employees were hired, including the rest areas, bathrooms, conference rooms, meeting rooms, classrooms, cafeterias or vehicles.

8. Club: Organization that owns or operates a building or premises for the exclusive use of club purposes, which operates for recreational, fraternal, social, sports or charitable activities.
9. Public place: Open or closed environment to which the public has free access, including educational, health, public transportation centers, lobby and reception areas in hotels and motels, restaurants, retail food production centers, sales areas, shopping centers, theaters and waiting rooms. The public place denomination to which this subsection refers does not limit its owners or managers from limiting access due to security reasons or from reserving the right of admission.
10. Restaurant: Establishments where food is served or dispensed, coffee shops, public and private cafeterias in schools, institutes, universities and other centers of study or those giving or offering food for sale to the public or employees.
11. Shopping center: Means a closed public place with hallways in an area of sales services or business and/or professional establishments.
12. Smoke: Means to inhale and exhale, burn or light any type of “puro”, cigar, cigarette or pipe or any kind of product that contains tobacco in any form.
13. Closed Place: Any place covered by a roof or enclosed by one or more walls or partitions despite the type of material used for the roof, walls or partitions and despite whether the structure is permanent or temporary.

Article 3: Express Ban: It is prohibited to smoke or to keep any type of tobacco product lit:

- a. Anywhere in closed public places.
- b. Anywhere in work places.
- c. On any means of publicly used, group or community transportation.

Article 4. Areas Not Banned: The following areas shall be considered exempt from the smoking ban:

- A. Hotel and motel rooms designed for guests in smoking areas, so long as they do not exceed twenty percent of the total number of hotel rooms. All smoking rooms must be on the same floor, be continuous, and the smoke from these rooms must not filter into other areas where smoking is banned, under the provisions of this article.

Article 5. Signage. All those places which, in accordance with this law, are smoke free environments and in which smoking is banned must have signs with the international no smoking symbols consisting of a red circle with a cigarette crossed through by a red line to the edges of the circle.

The no smoking sign must be clear and placed in every public place and place of employment where smoking is prohibited by law.

When the place, site, business or establishment, etc. to which this law refers has been declared a smoke free environment and smoking is banned, the sign must be placed visibly in the entry area or the access to same.

ARTICLE 6. PENALTIES. Non-observance of the prohibitive regulations established in this law shall be penalized as follows:

1. For failure to comply with the ban on smoking in any of the establishments, centers or areas referenced in Article 3 of this law, a penalty sanction equivalent to ten (10) minimum daily salaries for agricultural activities.

The second breach for the same failure to comply shall be double the sanction set forth for the breach. And for each subsequent breach the amount of the previous sanction shall be doubled.

2. The owner or manager of any of the establishments, centers or areas referenced in Article 3 of this law at which the prohibitive regulations are breached shall be penalized with a penalty sanction equivalent to one hundred (100) minimum daily salaries for agricultural activities. The second breach for the same failure to comply shall be double the sanction set forth for the breach. The third breach shall be penalized with closing of the establishment for a period of three (3) days, and for each subsequent breach, the time period from the previous penalty shall be doubled.

3. For failure to follow the provisions of Article 5 of this law, a penalty sanction equivalent to one hundred fifty (150) daily minimum salaries for agricultural activities shall be imposed. The second breach shall be penalized with closing of the establishment for a period of three (3) days, and for each subsequent breach, the time period from the previous penalty shall be doubled.

4. For establishing areas for smokers in a manner other than that determined by this law, a penalty sanction equivalent to two hundred (200) minimum daily salaries for agricultural activities. The second breach shall be penalized with closing of the

establishment for a period of three (3) days, and for each subsequent breach, the time period from the previous penalty shall be doubled.

Notwithstanding other penalties established by the regulations of this law, which must be issued thirty days after this law takes effect.

The procedure to apply penalties while it does not go against this law shall be established in Chapter Three of Decree 90-97 of the Congress of the Republic.

ARTICLE 7. RESPONSIBLE AUTHORITY AND INCOME. The Ministry of Public Health and Social Welfare is responsible for overseeing compliance with the regulations of this law, through the Department of the Regulation of Health Programs and Environment, for filing the corresponding reports and for applying the fines established by the law and regulations in coordination with the Ministry of the Interior and its offices under its strictest responsibility.

Earnings coming from this law's application shall be identified as private Ministry of Health and Social Welfare funds and be aimed exclusively at programs for tobacco prevention and control.

Article 8. Repeals. Expressly repealed are subparagraph b) of Article 51 of the Health Code, Decree 90-97 of the Congress of the Republic and its reforms, as well as any other regulation or legal provision referring to authorization for retrofitting areas for smokers in establishments where foods are dispensed or consumed.

Article 9. Term. This law shall take effect sixty days from its publication in the Official Gazette.