

Update on Smoke-free Restaurants and Bars Law Rules



**WEBINAR FOR LOCAL HEALTH
DEPARTMENTS**

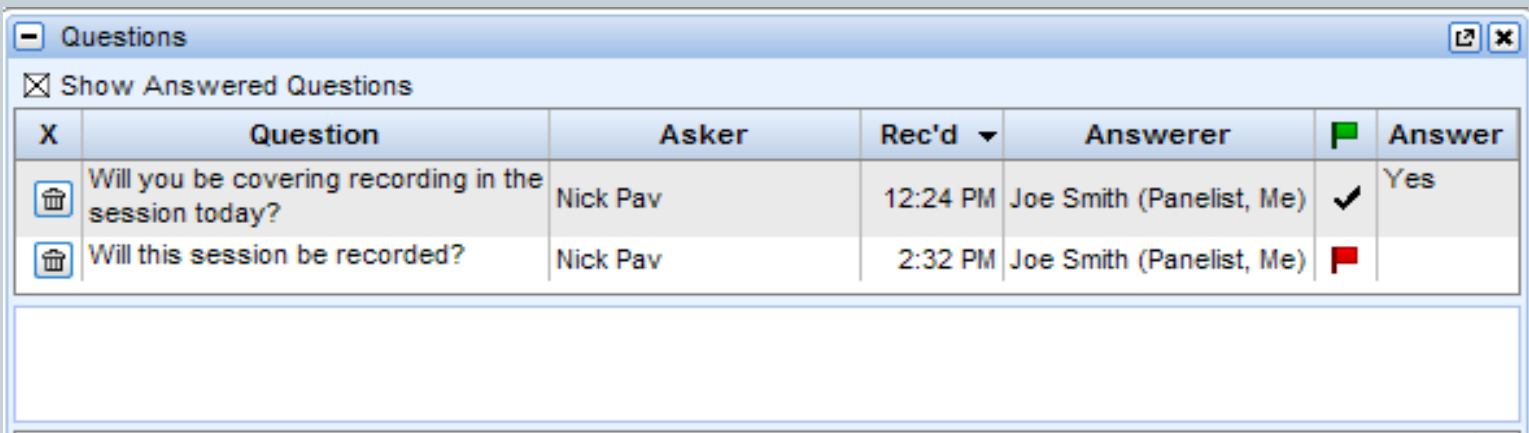
JULY 31, 2014

**TOBACCO PREVENTION AND CONTROL
BRANCH**



DIVISION OF PUBLIC HEALTH

Webinar - Housekeeping Items

- All participants are automatically set on MUTE.
- Participants may use the QUESTIONS box, located on your control panel, to ask questions during the presentation. Sherri Troop will speak to you privately if she can address your question but if she determines it is a question for the presenter, she will forward your question to the presenter to be answered during a “questions and answers” session at the end of the webinar.



The screenshot shows a window titled "Questions" with a checkbox for "Show Answered Questions" which is checked. Below the checkbox is a table with columns: X, Question, Asker, Rec'd, Answerer, and Answer. The first row shows a question "Will you be covering recording in the session today?" asked by Nick Pav at 12:24 PM, answered by Joe Smith (Panelist, Me) with a checkmark and the word "Yes". The second row shows a question "Will this session be recorded?" asked by Nick Pav at 2:32 PM, answered by Joe Smith (Panelist, Me) with a red flag icon and no text answer.

X	Question	Asker	Rec'd	Answerer	Answer
	Will you be covering recording in the session today?	Nick Pav	12:24 PM	Joe Smith (Panelist, Me)	✓ Yes
	Will this session be recorded?	Nick Pav	2:32 PM	Joe Smith (Panelist, Me)	🚩

Webinar - Housekeeping Items



- This webinar will be recorded and archived.
- Presentation slides will be available to participants following the webinar and upon request.
 - We welcome your responses as they will help form any new webinars we create.
- For more information about this webinar please contact: Jim Martin, Director of Policy and Programs, at Jim.Martin@dhhs.nc.gov

Objectives for the Webinar



- Increase knowledge and understanding of the new Commission for Public Health Rule that specifically clarifies the definition of enclosed areas in restaurants and bars where smoking is prohibited by state law.
- Describe how local environmental health staff will assess compliance with this rule during an inspection to ensure consistent interpretation and enforcement of the statewide law based on the new rule.

H74: Regulatory Reform Act of 2013



SMOKING BAN RULES

SECTION 23. No later than **January 1, 2014**, the **Commission for Public Health shall amend and clarify its rules** adopted pursuant to G.S. 130A-497 for the implementation of the prohibition on smoking in restaurants and bars. **The rules shall ensure the consistent interpretation and enforcement** of Part 1C of Article 23 of Chapter 130A of the General Statutes and shall **specifically clarify the definition of enclosed areas** for purposes of implementation of the Part. Rules adopted pursuant to this section (i) shall be exempt from the requirements of G.S. 150B-21.4, (ii) are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes, and (iii) shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2). No later than November 1, 2013, the Commission shall report to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending and clarifying the rules.

This New Rule goes into effect August 1, 2014

10A NCAC 39C .0104 CLARIFICATION OF THE DEFINITION OF ENCLOSED AREA

- (a) An area is enclosed if it has
 - (1) a roof or other overhead covering and
 - (2) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area.
- (b) A roof, overhead covering, wall or side covering includes any permanent or temporary physical barrier or retractable divider. Examples of materials for a roof, overhead covering, wall or side covering include wood, metal, canvas, tarp, cloth, glass, tent material, plastic, vinyl sheeting, fabric shades, lattice, awning material, polyurethane sheeting or any other similar material. Walls or side coverings do not include mesh screening which is 0.011 gauge with an 18 by 16 mesh count or more open mesh size.
- (c) An opening means a door, a window or any other aperture that is open to the outdoors.
- (d) If the openings in an unenclosed area are covered, such that the area at that time meets the definition of being enclosed pursuant to Paragraph (a) of this Rule, then smoking must be prohibited in the area while the openings are so covered.
- (e) If windows or doors form any part of the partition between an enclosed area and an unenclosed area that is used for smoking, these openings shall be closed at all times during the operation of the establishment except for ingress and egress to prevent migration of smoke into the enclosed area.
- (f) Nothing in this Rule prohibits a restaurant or bar owner from making an unenclosed area smoke-free.
- (g) Local health department environmental health staff shall assess compliance with this rule during the next required inspection following the effective date of this rule and subsequently as necessary.
- (h) Required plan review for new restaurants and restaurants undergoing a change in ownership shall include review for compliance with this Rule.

History Note: Authority G.S. 130A-497; Eff. August 1, 2014.

Brief Background



THE EVOLUTION OF THE NEW RULE

“Enclosed” as defined by the Current Law



- **S.L. 2009-27 *Prohibit Smoking in Certain Public Places*** prohibits smoking in **enclosed areas** of restaurants and bars. G.S.130A-492 defines “enclosed area” as “*an area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one*”.





New Year's Eve
PARTY
LUNCH AND DRINKS
12:00 - 1:00 PM
\$15.00
\$20.00
\$25.00
\$30.00
\$35.00
\$40.00
\$45.00
\$50.00
\$55.00
\$60.00
\$65.00
\$70.00
\$75.00
\$80.00
\$85.00
\$90.00
\$95.00
\$100.00
\$105.00
\$110.00
\$115.00
\$120.00
\$125.00
\$130.00
\$135.00
\$140.00
\$145.00
\$150.00
\$155.00
\$160.00
\$165.00
\$170.00
\$175.00
\$180.00
\$185.00
\$190.00
\$195.00
\$200.00
\$205.00
\$210.00
\$215.00
\$220.00
\$225.00
\$230.00
\$235.00
\$240.00
\$245.00
\$250.00
\$255.00
\$260.00
\$265.00
\$270.00
\$275.00
\$280.00
\$285.00
\$290.00
\$295.00
\$300.00
\$305.00
\$310.00
\$315.00
\$320.00
\$325.00
\$330.00
\$335.00
\$340.00
\$345.00
\$350.00
\$355.00
\$360.00
\$365.00
\$370.00
\$375.00
\$380.00
\$385.00
\$390.00
\$395.00
\$400.00
\$405.00
\$410.00
\$415.00
\$420.00
\$425.00
\$430.00
\$435.00
\$440.00
\$445.00
\$450.00
\$455.00
\$460.00
\$465.00
\$470.00
\$475.00
\$480.00
\$485.00
\$490.00
\$495.00
\$500.00
\$505.00
\$510.00
\$515.00
\$520.00
\$525.00
\$530.00
\$535.00
\$540.00
\$545.00
\$550.00
\$555.00
\$560.00
\$565.00
\$570.00
\$575.00
\$580.00
\$585.00
\$590.00
\$595.00
\$600.00
\$605.00
\$610.00
\$615.00
\$620.00
\$625.00
\$630.00
\$635.00
\$640.00
\$645.00
\$650.00
\$655.00
\$660.00
\$665.00
\$670.00
\$675.00
\$680.00
\$685.00
\$690.00
\$695.00
\$700.00
\$705.00
\$710.00
\$715.00
\$720.00
\$725.00
\$730.00
\$735.00
\$740.00
\$745.00
\$750.00
\$755.00
\$760.00
\$765.00
\$770.00
\$775.00
\$780.00
\$785.00
\$790.00
\$795.00
\$800.00
\$805.00
\$810.00
\$815.00
\$820.00
\$825.00
\$830.00
\$835.00
\$840.00
\$845.00
\$850.00
\$855.00
\$860.00
\$865.00
\$870.00
\$875.00
\$880.00
\$885.00
\$890.00
\$895.00
\$900.00
\$905.00
\$910.00
\$915.00
\$920.00
\$925.00
\$930.00
\$935.00
\$940.00
\$945.00
\$950.00
\$955.00
\$960.00
\$965.00
\$970.00
\$975.00
\$980.00
\$985.00
\$990.00
\$995.00
\$1000.00

Opportunity to Clarify



- **Battleground Restaurant Group, Inc., d/b/a Kickback Jack's** appealed administrative penalties to the New Hanover County Board of Health in 2012. It contended that the smoking area in Kickback Jack's was not an "enclosed area" within the meaning of NC G.S. §130A-492(5) and §130A-496 due to the presence of windows and a door opening.
- The Board of Health heard the appeal on June 6, 2012 and rendered a decision upholding the penalties on June 19, 2012. Kickback Jack's filed notice of appeal to the New Hanover County District Court. The case was heard and upheld by the District Court in September 2012.
- This case provided an opportunity to clarify questions that restaurants, bars and the public may have about what clearly defines an unenclosed area.



NOW HIRING
www.mountainhouse.com



CARL WINNER AVE

MYRTLE AVE

STOP

WEEK
LADDER
FRIED
DINN

SPECIALS
APPET
STRIPS
2.129.95!





Process - Steps Taken



- **Convened expert team to draft rule. This included experts from the UNC School of Government; NC Attorney General's office, public health professionals.**
- **Sought input from:**
 - NC Restaurant and Lodging Association
 - NC Association of Local Health Directors
 - Office of the State Fire Marshall on building codes in NC
 - NC Alliance for Health
 - Battleground Restaurants Group

Timeline: S.L. 2013-413 Section 23

Clarify the Definition of Enclosed Areas for NC Smoke-free Restaurant and Bars Law



Certified by the Office of State Budget and Management

September 18, 2013

Proposed Rule was Posted by the Office of Administrative Hearings for Public Comment

October 1, 2013

Written comments were sent to:
Chris G. Hoke, JD
1931 Mail Service Center
Raleigh, NC 27699-1931

Public Hearing

October 23, 2013

Updated the Commission for Public Health

October 25, 2013

The Commission reported to the Joint Legislative Oversight Committee on Health and Human Services on its progress in amending and clarifying the rules.

November 1, 2013

Comment Period ended

December 2, 2013

Commission for Public Health Meeting

December 4, 2013

Approval by the NC General Assembly

Session began on May 14, 2014 and the 31st legislative day was July 9, 2014; Eff. Date August 1, 2014

Public Hearing October 23, 2013



Spoke in Favor of the Proposed Rules as posted	Spoke in favor of changing the Proposed Rules
NC Restaurant and Lodging Association	Battleground Restaurant Group
American Heart Association/American Stroke Association Mid Atlantic Affiliate	
NC Alliance for Health, representing 26 organizations to-date. See below*	
American Cancer Society Cancer Action Network	
NC Association of Local Health Directors	

*American Cancer Society Cancer Action Network; American Heart Association; American Lung Association of NC; Americans for Non-smokers Rights; Asheville High School Teens Against Tobacco Use Club; Campaign for Tobacco Free Kids; Cone Health Foundation; Covenant for North Carolina's Children; Forsyth County Infant Mortality Reduction Coalition; Hyde County Health Department; Lung Cancer Initiative of NC; March of Dimes NC Chapter; NC Citizens for Public Health; NC Council of Churches; NC Pediatric Society; NC Prevention Partners; NC State Alliance of YMCA's; NC League of Conservation Voters; NC Public Health Association; Scotland County Department of Health; Smoke Free Guilford; Smoke Free Mecklenburg; Vidant Medical Center Pediatric Asthma Center; YMCA of the Triangle: Youth Empowered Solutions; plus several individuals - legislators, former legislators/bill sponsors; former health officials.

Legislative Intent



- Letter signed by six current and former state legislators who supported the passage of NC's Smoke-Free Restaurants and Bars Law
- Expressed support for the adoption of the rule clarification of the definition of “enclosed area” as proposed by DPH

*The legislative intent behind HB2, Prohibit Smoking in Certain Public Places, was to prohibit smoking indoors, or in “enclosed” areas of restaurants and bars, as a means to **protect workers and customers alike from the proven dangers of secondhand smoke**...by defining “enclosed area” as the law did, it was our intent to **allow business owners some flexibility** to permit smoking in settings that were truly outdoor, or unenclosed.*

Quote from Public Comments



“...I recall visiting restaurants as I was bearing child in 2008 and wondering what harm my unborn child was being exposed to as I performed my job.”

(After the law went into effect) I had the privilege of inspecting restaurants without this unnecessary worry...”

-Registered Environmental Health Specialist

Negotiations with Battleground Restaurant Group



- Interest is to ensure the consistent interpretation and enforcement statewide.
- DPH drafted guidance to help ensure consistent interpretation and enforcement statewide.
- Some aspects of guidance were then added to the proposed rules at Battleground Restaurant Group's request.
- Revised Proposed Rule resolved their concerns.

Commission for Public Health Adopts New Rules at December 4, 2013 Meeting.



	Supportive	Opposed
Individuals	13	0
Organizations	63	0
Total	76	0

Rationale for the New Rule



- The legislative intent behind the Smoke-Free Restaurants and Bars law was to prohibit smoking indoors in enclosed areas of restaurants and bars to protect workers and customers alike from the proven dangers of secondhand smoke.
- The rule was adopted to specifically clarify the definition of **enclosed areas**.
- The rule provides objective and quantifiable measurements to ensure consistent interpretation and enforcement of the law statewide.

Understanding the New Rule



AND CONSISTENT IMPLEMENTATION...

Commission for Public Health Rules



- **A Commission for Public Health administrative rule is issued through the executive authority of government and has the force of law.**
- **This Administrative Rule (10A NCAC 39C .0104) will be entered into the NC Administrative Code.**

This New Rule Goes into Effect August 1, 2014

10A NCAC 39C .0104 CLARIFICATION OF THE DEFINITION OF ENCLOSED AREA

- (a) An area is enclosed if it has
 - (1) a roof or other overhead covering and
 - (2) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area.
- (b) A roof, overhead covering, wall or side covering includes any permanent or temporary physical barrier or retractable divider. Examples of materials for a roof, overhead covering, wall or side covering include wood, metal, canvas, tarp, cloth, glass, tent material, plastic, vinyl sheeting, fabric shades, lattice, awning material, polyurethane sheeting or any other similar material. Walls or side coverings do not include mesh screening which is 0.011 gauge with an 18 by 16 mesh count or more open mesh size.
- (c) An opening means a door, a window or any other aperture that is open to the outdoors.
- (d) If the openings in an unenclosed area are covered, such that the area at that time meets the definition of being enclosed pursuant to Paragraph (a) of this Rule, then smoking must be prohibited in the area while the openings are so covered.
- (e) If windows or doors form any part of the partition between an enclosed area and an unenclosed area that is used for smoking, these openings shall be closed at all times during the operation of the establishment except for ingress and egress to prevent migration of smoke into the enclosed area.
- (f) Nothing in this Rule prohibits a restaurant or bar owner from making an unenclosed area smoke-free.
- (g) Local health department environmental health staff shall assess compliance with this rule during the next required inspection following the effective date of this rule and subsequently as necessary.
- (h) Required plan review for new restaurants and restaurants undergoing a change in ownership shall include review for compliance with this Rule.

History Note: Authority G.S. 130A-497; Eff. August 1, 2014.

Rule Clarifies the Definition of Enclosed Areas in the Smoke-free Law



- The North Carolina state law (G.S. 130a-496) prohibits smoking in “enclosed” areas of restaurants and bars.
- The rule clarifies that an area in a restaurant or bar is **enclosed** if it has a roof or other overhead covering, **and** permanent or temporary walls or side coverings on three or more sides that make up **55 percent** or more of the total combined perimeter surface area.
- In other words, for an area with roof to be considered **unenclosed**, two or more of the four permanent or temporary walls or side coverings must be open to the outdoors and the walls or side covering must make up **less than 55 percent** of the total combined perimeter surface area.

How to Calculate Whether an Area is Enclosed based on the Commission for Public Health Adopted Rules



(a) An area is enclosed if it has

- (1) a roof or other overhead covering and
- (2) permanent or temporary walls or side coverings on **three or more sides** that make up **55 percent** or more of the **total combined perimeter surface area**.

Step 1

- Measure the **WIDTH** and **HEIGHT** of each wall or side forming the perimeter of the area under consideration. (Use only vertical sides; roof and floor are not included.)

Step 2

- Multiply the **WIDTH** times the **HEIGHT** of each wall or side to determine the **Square Footage** of each wall or side.

Step 3

- Add the **Square Footage** of each wall or side to find the **Total Combined Perimeter Surface Area**.

Step 4

- Measure the **WIDTH** and **HEIGHT** of the openings to the outdoors in each wall or side.

Step 5

- Multiply the **WIDTH** times the **HEIGHT** of each opening to the outdoors in the walls or sides to determine the **Square Footage** of each opening(s).

Step 6

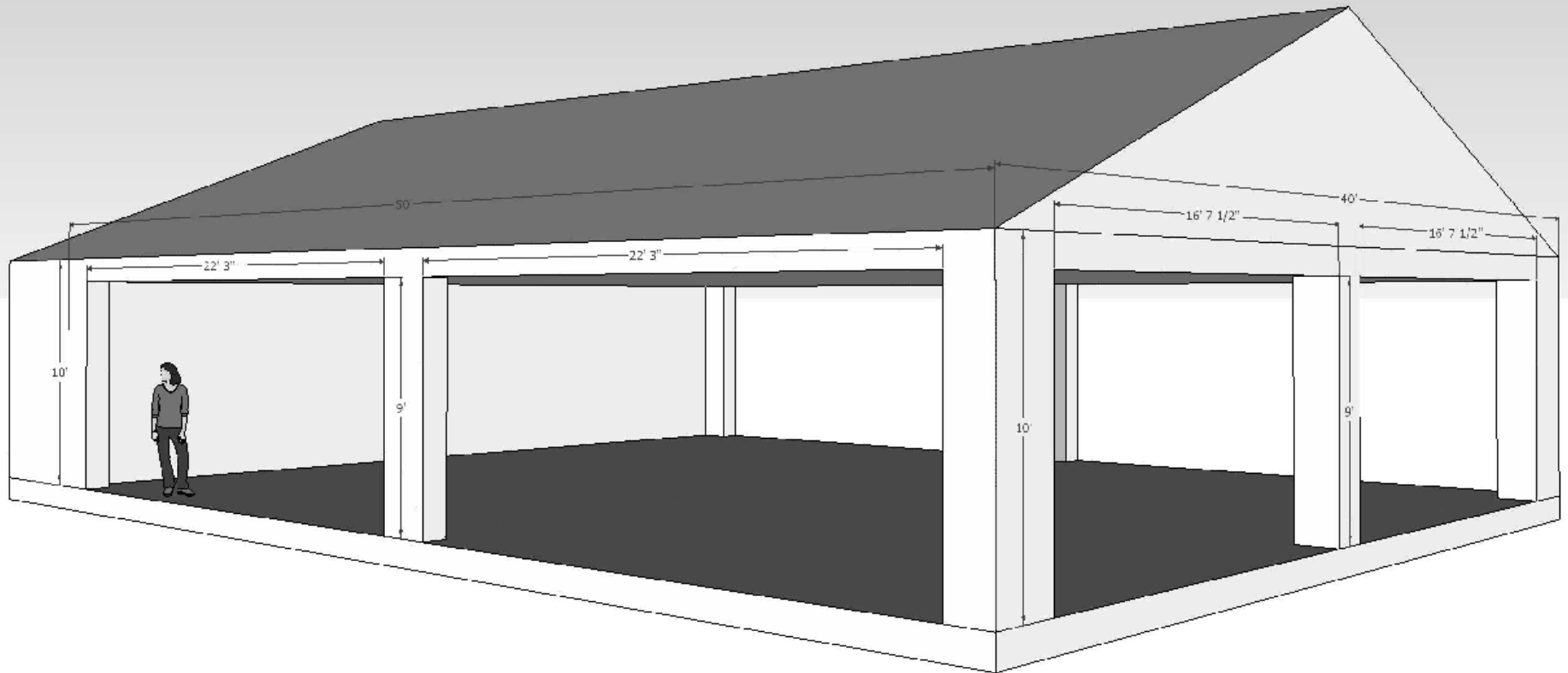
- Add the **Square Footage** of each opening to the outdoors in the walls or sides to find the **Open Surface Area**.

Step 7

- Divide the **Open Surface Area** by the **Total Combined Perimeter Surface Area** to determine the percentage of the walls or sides that is open to the outdoors.

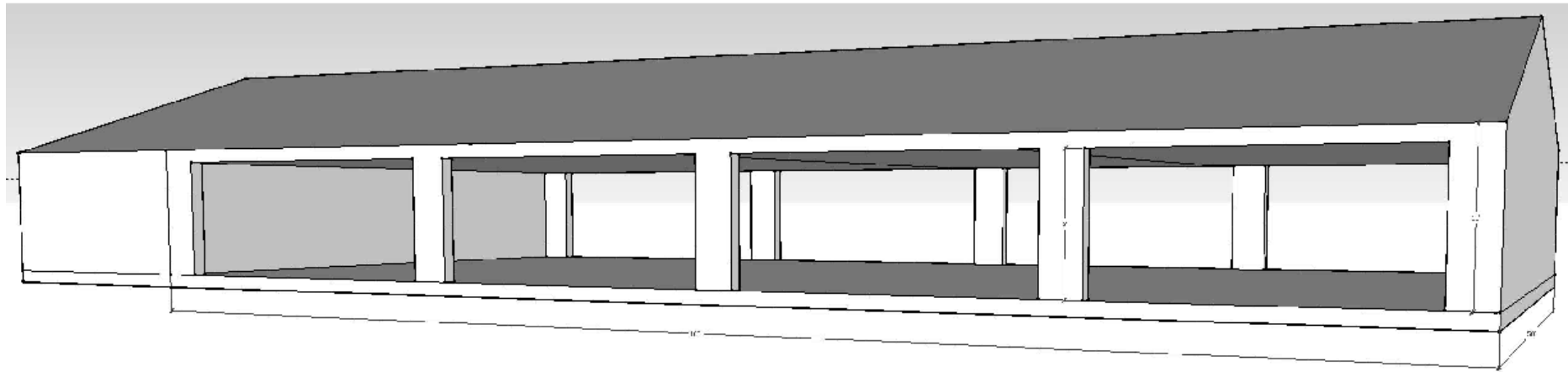
Example 1: Unenclosed

Example 1---**39%** of the Total Combined Perimeter Surface Area of the four walls is enclosed
(**<55 percent**)



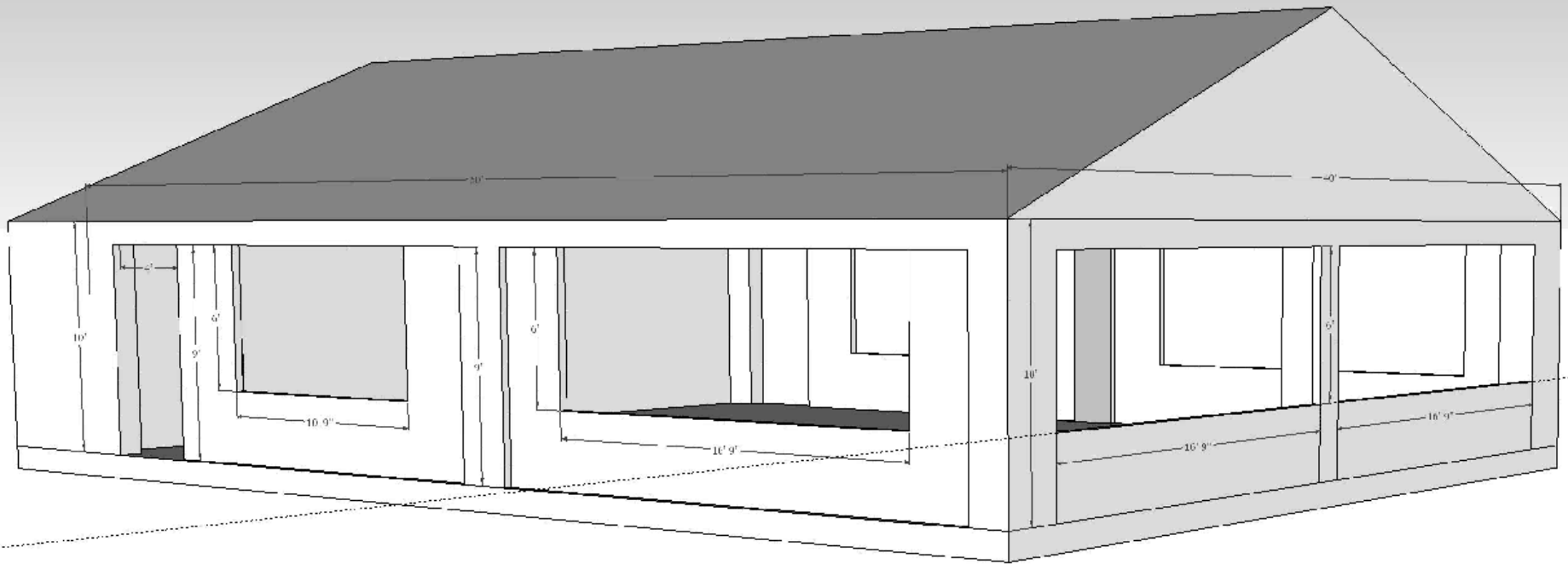
Example 2: Unenclosed

Example 2---**40%** of the Total Combined Perimeter Surface Area of the four walls is enclosed (<**55 percent**)



Example 3: Enclosed

Example 3---**60%** of the Total Combined Perimeter Surface Area of the four sides is enclosed
(**>55 percent**)



Rule Clarifies What is Considered a Roof or Overhead Covering



- A roof or overhead covering includes any permanent or temporary physical barrier or retractable divider.
- Materials that make a roof or overhead covering include wood, metal, canvas, tarp, cloth, glass, tent material, plastic, vinyl sheeting, fabric shades, lattice, awning material, polyurethane sheeting or any other similar material.
- Mesh screens that allow free movement of air and are 0.011 gauge with an 18 x 16 mesh count or more open mesh size are not considered overhead coverings.

Rule Clarifies What is Considered a Wall or Side Covering



- The criteria are the same as for a roof or overhead covering. A wall or side covering includes any permanent or temporary physical barrier or retractable divider.
- Materials that make a wall or side covering include wood, metal, canvas, tarp, cloth, glass, tent material, plastic, vinyl sheeting, fabric shades, lattice, awning material, polyurethane sheeting or any other similar material.
- Mesh screens that allow free movement of air and are 0.011 gauge with an 18 x 16 mesh count or more open mesh size are not considered walls or side coverings.

The Rule Clarifies What is Considered an Opening



- **An opening means a door, a window, or any other aperture that is open to the outdoors.**

What happens if openings need to be closed due to cold weather, rain, or because the restaurant is closing up for the day?



- The Rules states that if the openings in an unenclosed area are covered, such that the area at the time meets the definition of being enclosed, then smoking must be prohibited in the area while the openings are covered, the ashtrays must be removed from the area and no smoking signs must be posted.

Does the rule address the situation of having windows or doors that form part of the partition between an enclosed area and an unenclosed area?



- **Yes, if windows or doors form any part of the partition between an enclosed area and an unenclosed area that is used for smoking, these openings shall be closed at all times during the operation of the establishment except for ingress and egress to prevent migration of smoke into the enclosed area.**

Is smoking allowed in the outdoor section of a restaurant/bar?



- If the outdoor section meets the definition of an “unenclosed” area, then smoking is not prohibited by law.
- However, restaurant /bar owners and managers may voluntarily put into place a policy that prohibits smoking in these unenclosed areas.

Ensuring Consistent Interpretation and Compliance



- **Advisory Team approval of educational information and training plans.**
- **A letter and educational information will be mailed out to all restaurants and bars.**
- **Educational material about the new rule will be provided to the NC Restaurant and Lodging Association for distribution to members.**
- **NC Division of Public Health will post guidance documents about the rule at www.smokefree.nc.gov.**

Compliance with the Law and Rule



- **The owner or manager of the establishment is responsible for compliance with the law.**
- **Local health department environmental health staff shall assess compliance with this rule during the next required inspection following the effective date of this rule and subsequently as necessary.**
- **The required plan review for new restaurants and bars undergoing a change in ownership shall include review for compliance with this rule.**

Compliance with the Law and Rule (Cont.)



- A violation can be reported online at www.SmokeFree.NC.gov or by contacting the local health department.
- Ultimately, businesses that are not following the smoke-free law may be issued warnings and/or fines for violating the law.

Questions? Thank you!



CHRIS HOKE, J.D.
CHRIS.HOKE@DHHS.NC.GOV
919 707-5006

SALLY HERNDON, MPH
SALLY.HERNDON@DHHS.NC.GOV
919-707-5401

JIM D. MARTIN, MS
JIM.MARTIN@DHHS.NC.GOV
919-707-5404