

**GUAM CODE ANNOTATED**  
**2005 EDITION**

**FIRST SUPPLEMENT**  
**APRIL 2006**

**VOLUME 4**  
**TITLE 10**

**CURRENT THROUGH PUBLIC LAW 28-111**  
**(APRIL 14, 2006)**

**PREPARED BY THE**  
**OFFICE OF THE COMPILER OF LAWS**  
**HAGÁTÑA, GUAM**  
**©2006**

### Scope of this Supplement

In December of 2005, the Guam Code Annotated 2005 Edition was released, which updated the code through parts of Public Law 28-68 then in effect. This supplement updates Volume 3 of the 2005 Edition through Public Law 28-100 which was signed into law on February 7, 2006. Included in this supplement are corrections made to Volume 3. The following table identifies the updated and corrected sections. **[NO CORRECTIONS TO THIS VOLUME]**

### Table of Sections Updated

<b>Title</b>	<b>Section</b>	<b>Action</b>	<b>Public Law</b>
10	2907.5	Added	28-68 : II:III:4
10	3108	Added	28-68 : II:III:29b
10	34101	Amended	28-111 : 1
10	34116	Amended	28-108 : 2
10	34123	R/R	28-108 : 4
10	34125	Added	28-108 : 3
10	34201	Amended	28-111 : 1
10	34307	Amended	28-111 : 3
10	65103	Amended	28-68 : IV:42
10	67100	Amended	28-68 : IV:42
10	67105.1	Added	28-78 : 4
10	67106	R/R	28-78 : 1
10	67109	Added	28-78 : 2
10	72105.5	Amended	28-68 : IV:45
10	72106	Amended	28-68 : II:II:20
10	72107	Added	28-68 : II:II:23
10	77110.1	Amended	28-68 : IV:45
10	80104 (l)	Added	28-68 : II:III:33
10	80106 (i)	Added	28-68 : II:III:35
10	80107	Amended	28-68 : IV:42
10	80107.1	Amended	28-68 : IV:42
10	80115	Amended	28-68 : II:III:27
10	87103	Amended	28-68 : IV:45
10	87108	Amended	28-68 : IV:42

<b>Title</b>	<b>Section</b>	<b>Action</b>	<b>Public Law</b>
10	90100	Amended	28-80 : 2
10	90103	Amended	28-80 : 3
10	90105	Amended	28-80 : 4
10	90107	Amended	28-80 : 5

## TITLE 10 HEALTH & SAFETY

### 10 GCA § 2907.5. Report on MIP Clients.

Within ninety (90) days after the enactment hereof, the Director of Public Health and Social Services shall submit a report to *I Maga'lahaen Guåhan* and the Speaker of *I Liheslaturan Guåhan* on the following:

(1) a statistical profile of client utilization of the MIP that states the mean, median and mode expenditures from the program on an annual basis;

(2) a demographic profile of MIP clients, including a breakdown by citizenship, that can be used by Guam's Delegate to Congress to advance Guam's interest with respect to Compact Impact funding, and other information such as the age, gender, number of household members, annual income, length of Guam residence, and length of time in the MIP;

(3) a comparison of the benefits and services available from the most generous current government of Guam health insurance health plan policy (HPP) having the fewest medical exclusions and most liberal benefits with the benefits and services currently available from the MIP; and

(4) an analysis of the financial impact on the Guam Memorial Hospital Authority if MIP benefits are made commensurate with those extended by the health insurance plan described in the previous subsection.

**SOURCE:** Added by P.L. 28-068:II:III:4 (Sept. 30, 2005).

### 10 GCA § 3108. Chief Pharmacists for the Community Health Centers.

The Department of Public Health and Social Services is authorized to have a Chief Pharmacist for the Northern and Southern Community Health Centers and a Chief Pharmacist for the Central Public Health Facility.

**SOURCE:** Added by P.L. 28-068:II:III:29:b (Sept. 30, 2005).

### 10 GCA § 34101. Definitions.

For purposes of this Article:

(a) *Euthanasia* meaning putting an animal to death by drug in a manner provided by regulation of the Department of Agriculture (the *Department*).

(b) *Impoundment* means strict confinement under restraint by leash, cage or paddock upon premises specified by order of the Director of Public Health and Social Services (the "Director").

(c) *Officer* means a member of the Guam Police Department, a Mayor of Guam, or a person authorized by the Director.

(d) *Person* means any natural person, association, partnership, firm, corporation or any government entity.

(e) *Pet* means a cat or dog.

(f) *Pet owner* means any person or legal entity who harbors, cares for, exercises control over or knowingly permits any pet to remain on premises occupied by that person or legal entity.

(g) *Running at large* means any dog that

(1) is not restrained on private property in a manner that physically prevents the dog from leaving that property or reaching any public areas; or

(2) when on public property, or any public area, is not restrained by a leash, tether or other physical control device not to exceed eight (8) feet in length and under the physical control of a capable person.

(h) *Unlicensed pet* means any pet not exempted under the provisions of this Article for which the license for the current year has not been issued or to which the license tag is not attached.

(i) *Department* means the Department of Agriculture.

(j) *Director* means the Director of the Department of Agriculture.

**SOURCE:** Added by P.L. 12-13.

**NOTE:** This section was amended by P.L. 28-111:1 (April 14, 2006) with the effective date 90 days from enactment. The amendment is as follows:

For purposes of this Article:

(a) “Euthanasia” means putting an animal to death by drug in a manner provided by regulation of the Department of Agriculture (the Department).

(b) “Impoundment” means strict confinement under restraint by leash, cage or paddock upon premises specified by order of the Director of Agriculture (the “Director”).

(c) “Officer” means a member of the Guam Police Department, a Mayor of Guam, or a person authorized by the Director.

(d) “Person” means any natural person, association, partnership, firm, corporation or any government entity.

(e) “Pet” means a cat or dog.

(f) “Pet owner” means any person or legal entity who harbors, cares for, exercises control over or knowingly permits any pet to remain on premises occupied by that person or legal entity.

(g) "Running at large" means any dog that

(1) is not restrained on private property in a manner that physically prevents the dog from leaving that property or reaching any public areas; or

(2) when on public property, or any public area, is not restrained by a leash, tether or other physical control device not to exceed eight (8) feet in length and under the physical control of a capable person.

(h) "Unlicensed pet" means any pet not exempted under the provisions of this Article for which the license for the current year has not been issued or to which the license tag is not attached.

(i) "Department" means the Department of Agriculture.

(j) "Director" means the Director of Agriculture."

**10 GCA § 34116. Dog Running at large, Impoundment, Holding Period, Sterilization and Adoption.**

(a) It shall be unlawful for any dog owner to negligently allow a dog owned by him to run at large.

(b) Any pet over three (3) months old that is not licensed as required by § 34102 of this Article or any dog that is not wearing a current tag in accordance with § 34106 of this Article or any dog that is running at large shall be apprehended and impounded or disposed of in accordance with regulations adopted by the Director.

(c) The owner, as shown on the license, of any licensed pet that has been impounded shall be notified of such impoundment and that the pet, if not claimed within ten (10) days after such notification, may be given for adoption upon payment of the applicable per diem costs and adoption deposit or humanely destroyed. Such notice may be delivered personally to the owner, let at his place or residence in Guam, or sent by regular mail to his last known address, or informed by telephone or fax to the number(s) as shown on the license. At the end of ten (10) days after notification, any licensed pet not claimed may be given for adoption upon payment of the applicable per diem costs and adoption deposit or humanely destroyed.

(d) Any unlicensed pet that has been impounded shall be kept for three (3) days and may be claimed by the owner by obtaining a license as provided in this Article and paying for the costs for care and keep. At the end of three (3) days after impoundment, any such pet not claimed may be given for adoption or humanely destroyed.

(e) A per diem charge to be fixed annually by the Director on the basis of operating costs shall be charged for every day, or part thereof, for any pet, kept in

the pound. Such charge shall be borne by the owner of the impounded pet, if known, and shall be included in costs to any claimant.

(f) All pets over the age of six (6) months given for adoption shall be sterilized before being released to new owners. Any expense incurred for such operations or vaccinations shall be included with the costs of care and keep and borne by the new owner.

(g) No dog or cat under the age of six (6) months to be given for adoption shall be released without a written agreement from the adopter guaranteeing that such animal will be sterilized. A deposit of at least Seventy-Five Dollars (\$75) must be paid at the time of adoption of a dog, and Fifty Dollars (\$50) for a cat to guarantee for sterilization. Failure to perform the sterilization shall be a forfeiture of the amount deposited and the animal shall be returned to the pound.

**SOURCE:** Added by P.L. 22-13. Subsection (a) amended by P.L. 28-108:2 (April 14, 2006).

### **10 GCA § 34123. Establishment of the ‘Stray Dog Revolving Fund.’**

There is hereby established a restricted fund account called the ‘Stray Dog Revolving Fund’, which shall be used by the Department to purchase equipment and supplies for the effective implementation and enforcement of Articles 1 and 2 of this Chapter. All fees and revenues collected by the Department of Agriculture pursuant to Articles 1 and 2 of this Chapter and all fines imposed pursuant to Articles 1 and 2 of this Chapter shall be deposited into the ‘Stray Dog Revolving Fund’. The Director of Agriculture shall administer the Fund for the purposes provided herein.”

**SOURCE:** Repealed and reenacted by P.L. 28-108:4 (April 14, 2006).

### **10 GCA § 34125. Penalties for Violation of Articles 1 and 2.**

Notwithstanding the penalties created by § 34124, violations of Articles 1 and 2 of this Chapter shall be punished by a fine to be imposed on the pet owner of not less than \$25 for the first offense, \$50 for a second offense, and \$100 for a third and subsequent offense. The pet owner shall also pay all applicable costs, such as vaccination, licensing and the per diem fee for impoundment.

**SOURCE:** Added by P.L. 28-108:3 (April 14, 2006).

### **10 GCA § 34201. Definitions.**

For purposes of this Article:

(a) *Animal* means any live non-human vertebrate creature, domestic or wild;

(b) *Animal shelter* means any facility operated by a humane society, the government of Guam or its authorized agents for the purpose of caring for animals held under the authority of this Article;

(c) *Auctions* mean any place or facility where animals are regularly bought, sold or traded, except for those facilities otherwise defined in this Article. This does not apply to individual sales of animals by owners;

(d) *Circus* means a commercial variety show featuring animal acts for public entertainment;

(e) *Commercial animal establishment* means an pet shop, grooming shop, auction, riding school or stable, zoological park, circus performing animal exhibition, animal quarantine facility or kennel;

(f) *Grooming shop* means a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed;

(g) *Officer* means a member of the Guam Police Department, a Mayor or a person authorized by the Director of Public Health and Social Services (the "Director");

(h) *Kennel* means any premises wherein any person engaged in the business of boarding, breeding, buying, letting for hire, training for a fee, selling dogs or cats, or any premise in a non-agricultural zone area upon which five (5) or more adult dogs or cats are harbored or kept;

(i) *Owner* means any person, partnership or corporation owning, keeping or harboring one (1) or more animals. An animal shall be deemed to be harbored if it is fed or sheltered three (3) consecutive days or more;

(j) *Performing animal exhibition* means any spectacle, display, act or event other than circuses in which performing animals are used;

(k) *Pet* means any animal kept for pleasure rather than utility;

(l) *Pet shop* means any person, partnership or corporation, whether operated separately or in connection with another business enterprise except for a licensed kennel that buys, sells or boards any species of animal;

(m) *Public nuisance* means any animal which

(1) Molests passersby or passing vehicles;

(2) Attacks other animals;

(3) Trespasses on school grounds;

(4) Is repeatedly at large; or

(5) Damages private or public property;

(n) *Restraint* means any animal secured by a leash or lead or under the control of a responsible person and obedient to that person's commands or within the real property limits of its owner;

(o) *Riding school or stables* mean any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule or burro;

(p) *Veterinary hospital* means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of disease and injuries of animals;

(q) *Vicious animal* means any animal that constitutes a physical threat to human beings or other animals;

(r) *Wild animal* means any animal which is not commonly domesticated, or which is not native to Guam, or which, irrespective of geographic origin, is of a wild or predatory nature, or any domesticated animal, which because of its size, vicious nature or other characteristics would constitute an unreasonable danger to human life or property if not kept, maintained or contained in a safe and secure manner;

(s) *Zoological parks* means any facility, other than a pet shop or kennel, displaying or exhibiting one (1) or more species of non-domesticated animals operated by a person, partnership, corporation or government agency;

(t) *Permitting authority* means the Department of Public Health and Social Services (the *Department*) which shall be the permitting authority for purposes of this Article.

**SOURCE:** Added by P.L. 12-13.

**NOTE:** This section was amended by P.L. 28-111:2 (April 14, 2006) with the effective date 90 days from enactment. The amendment is as follows:

“For purposes of this Article:

(a) “Animal” means any live non-human vertebrate creature, domestic or wild;

(b) “Animal shelter” means any facility operated by a humane society, the government of Guam or their authorized agents for the purpose of caring for animals held under the authority of this Article;

(c) “Auctions” mean any place or facility where animals are regularly bought, sold or traded, except for those facilities otherwise defined in this Article. This does not apply to individual sales of animals by owners;

(d) “Circus” means a commercial variety show featuring animal acts for public entertainment;

(e) “Commercial animal establishment” means a pet shop, grooming shop, auction, riding school or stable, zoological park, circus performing animal exhibition, animal quarantine facility or kennel;

(f) “Grooming shop” means a commercial establishment where animals are bathed, clipped, plucked or otherwise groomed;

(g) "Officer" means a member of the Guam Police Department, a Mayor or a person authorized by the Director of Agriculture (the "Director");

(h) "Kennel" means any premises wherein any person engaged in the business of boarding, breeding, buying, letting for hire, training for a fee, selling dogs or cats, or any premises in a non-agricultural zone area upon which five (5) or more adult dogs or cats are harbored or kept;

(i) "Owner" means any person, partnership or corporation owning, keeping or harboring one (1) or more animals. An animal shall be deemed to be harbored if it is fed or sheltered three (3) consecutive days or more;

(j) "Performing animal exhibition" means any spectacle, display, act or event other than circuses in which performing animals are used;

(k) "Pet" means any animal kept for pleasure rather than utility;

(l) "Pet shop" means any person, partnership or corporation, whether operated separately or in connection with another business enterprise except for a licensed kennel that buys, sells or boards any species of animal;

(m) "Public nuisance" means any animal that:

(1) Molests passersby or passing vehicles;

(2) Attacks other animals;

(3) Trespasses on school grounds;

(4) Is repeatedly at large; or

(5) Damages private or public property;

(n) "Restraint" means any animal secured by a leash or lead or under the control of a responsible person and obedient to that person's commands or within the real property limits of its owner;

(o) "Riding school or stables" mean any place which has available for hire, boarding and/or riding instruction, any horse, pony, donkey, mule or burro;

(p) "Veterinary hospital" means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of disease and injuries of animals;

(q) "Vicious animal" means any animal that constitutes a physical threat to human beings or other animals;

(r) "Wild animal" means any animal which is not commonly domesticated, or which is not native to Guam, or which, irrespective of geographic origin, is of a wild or predatory nature, or any domesticated animal, which because of its size, vicious nature or other characteristics would constitute an unreasonable danger to human life or property if not kept, maintained or contained in a safe and secure manner;

(s) "Zoological parks" means any facility, other than a pet shop or kennel, displaying or exhibiting one (1) or more species of non-domesticated animals operated by a person, partnership, corporation or government agency;

(t) “Permitting authority” means the Department of Agriculture (the Department) which shall be the permitting authority for purposes of this Article.”

### **10 GCA § 34307. Creation of Rabies Prevention Fund.**

There is created a special fund called the ‘*Rabies Prevention Fund*,’ which shall be exclusively used to support the implementation of this Act and to maintain, enhance and secure the prevention of rabies on Guam. All money collected under the provisions of this Chapter shall be deposited in the Rabies Prevention Fund. The Department of Administration shall be responsible of maintaining the accounting and administration of this fund. Annually, but not later than December 31 of each year, the Directors of the Departments of Administration and Public Health and Social Services shall report to *I Maga’lahen Guahan* and *I Liheslaturan Guahan* the results of operations of this fund, including the total monies collected and deposited in this fund and the total expended.

**SOURCE:** Added by P.L. 24-216:3.

**NOTE:** This section was amended by P.L. 28-111:3 (April 14, 2006) with the effective date 90 days from enactment. The amendment is as follows:

“There is created a special fund called the “Rabies Prevention Fund,” which shall be exclusively used to support the implementation of this Act and to maintain, enhance and secure the prevention of rabies on Guam. All money collected under the provisions of this Chapter shall be deposited in the Rabies Prevention Fund. The Department of Administration shall be responsible for maintaining the accounting and administration of this fund. No later than December 31<sup>st</sup> of each year, the Directors of the Departments of Administration and Agriculture shall report to *I Maga’lahen Guahan* and *I Liheslaturan Guahan* on the administration of this fund, including the total monies collected and deposited in this fund and the total expended.”

### **10 GCA § 65103. Office of Civil Defense: Creation; Administrator; Personnel.**

(a) There is hereby created, within the Office of *I Maga’lahen Guahan*, an Office of Civil Defense with an Administrator of Civil Defense, hereinafter called the ‘Administrator,’ who shall be a member of the classified service and is the administrative head of the Office of Civil Defense, subject to the direction and control of *I Maga’lahen Guahan*.

(b) The Administrator, with the approval of *I Maga’lahen Guahan*, may employ such technical, clerical, stenographic and other personnel and may make such expenditures within the appropriation therefore, or from other funds made available to him for purposes of civil defense, as may be necessary to carry out the purposes of this Chapter.

(c) The Administrator and other personnel of the Office of Civil Defense shall be provided by *I Maga’lahen Guahan* with appropriate office space,

furniture, equipment, motor vehicles, supplies, stationery and printing in the same manner as are provided for personnel of other government of Guam agencies.

(d) The Administrator, subject to the direction and control of *I Maga'lahaen Guåhan*, shall be the administrative head of the Office of Civil Defense and shall be responsible to *I Maga'lahaen Guåhan* for carrying out the program for the civil defense of Guam. He shall coordinate the activities of all organizations for civil defense within Guam, and shall maintain liaison with and cooperate with civil defense agencies and organizations and the Armed Forces of the Federal government, and shall have such additional authority, duties and responsibilities as are authorized by this Chapter, or as may be prescribed by *I Maga'lahaen Guåhan*.

**SOURCE:** GC § 8503. Amended by P.L. 24-298:8; P.L. 28-046:13 (June 10, 2007).

**NOTE:** Public Law 28-68:IV:42 (Sept. 30, 2005) purported to transfer the duties herein assigned to the Civil Service Commission to the Director of Administration. However, P.L. 28-046:13 (June 10, 2005) already removed reference to the Civil Service Commission from subsection (a).

## **10 GCA § 67100. Creation of Office.**

There is within the Office of *I Maga'lahaen Guåhan* an Office of Veterans Affairs. The Veterans Affairs Officer is a member of the classified service and is the administrative head of the Office of Veterans Affairs subject to the direction and control of *I Maga'lahaen Guåhan*, who is the appointing authority.

**SOURCE:** GC § 8975, as amended by P.L. 14-92. Amended by P.L. 24-298:12. Amended by P.L. 28-046:4.

**NOTE:** Public Law 28-068:IV:42 (Sept. 30, 2005) purported to transfer the duties herein assigned to the Civil Service Commission to the Director of Administration. However, P.L. 28-046 (June 10, 2005) already removed reference to the Civil Service Commission.

## **10 GCA § 67105.1. Veterans Cemetery Trust Fund.**

The Veterans Cemetery Trust Fund is transferred from the Guam Parks Commission to the Guam Veterans Commission. Any money paid by the Federal government to Guam in connection with the use of the cemetery shall be deposited in the Veterans Cemetery Trust Fund and used for the maintenance of the cemetery. Expenditures from the Fund shall be by direction of the Guam Veterans Commission, which shall annually account to *I Liheslaturan Guåhan* for the use of the Fund.

**SOURCE:** Added by P.L. 28-078:4 (Dec. 5, 2005).

## **10 GCA § 67106. Solicitation, Acceptance, Utilization and Administration of Gifts, Bequests and Donations.**

The Veterans Affairs Officer may solicit, accept, utilize and administer on behalf of the Office of Veterans Affairs, gifts, bequests and donations. The funds received shall be deposited into the Veterans Affairs Fund. Such gifts, bequests and donations shall be used for the maintenance of the Veterans Cemetery of Guam, the maintenance of the Veterans Affairs office, the sponsorship of events for veterans and purposes intended by the donor which are consistent with the goals and objectives of the Office of Veterans Affairs as stated in this Section. A quarterly report shall be submitted by the Veterans Affairs Officer to *I Magsalahen Guåhan*, the Speaker of *I Liheslaturan Guåhan*, and the Public Auditor, describing the solicitation, acceptance, utilization and administration of gifts, bequests and donations, and posted on the Office’s website.

**SOURCE:** GC § 8970, numbered §67105 by Compiler and later renumbered §67106 by P.L. 18-24. Repealed and reenacted by P.L. 28-078:1, (Dec. 5, 2005).

### **10 GCA § 67109. Veterans Affairs Fund.**

There is hereby created, separate and apart from other funds of the government of Guam, a special fund known as the Veterans Affairs Fund (the “Fund”). The Fund shall not be commingled with the General Fund or any other funds of the government of Guam. The Guam Veterans Commission shall approve all expenditures paid from the Fund. The Veterans Affairs Officer shall be the administrator of the Fund, and may issue warrants of expenditure pursuant to §67106 of this Chapter and shall maintain a record of all donations and expenditures.

**SOURCE:** Added by P.L. 28-078:2, (Dec. 5, 2005).

### **10 GCA § 72105.5. Untitled.**

Immediately after the Director of Administration makes recommendations pursuant to 4 GCA § 6232, the Guam Fire Department shall provide in its budget funding for the salary adjustments for firefighters as recommended by the Director.

**SOURCE:** Added by P.L. 28-62:3 (June 30, 2005).

**COMMENT:** Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

### **10 GCA § 72106. Fire, Life and Medical Emergency Fund (‘FLAME’).**

(a) Creation of Fire, Life and Medical Emergency Fund (“FLAME”). There is hereby created the Fire, Life and Medical Emergency Fund (“FLAME”). Sixty percent (60%) of all monies deposited within the Fund shall be used to purchase essential emergency rescue and firefighting vehicles, emergency life support and

medical equipment, and training for Emergency Medical Technician and Paramedic certifications. Forty percent (40%) of all monies deposited within the Fund shall be used to pay for emergency medical and paramedic certified firefighter salary adjustments required by 4 GCA § 6223 and § 6231 and 10 GCA § 72105.3. The Fund shall be under the control of the Guam Fire Department and the Director of Administration (the Director). The Director shall administer the Fund and release the necessary monies upon request by the Fire Chief for expenditures authorized by this Section. The Director shall report on a quarterly basis to the Speaker of *I Liheslaturan Guåhan* the revenues collected and expended from this Fund and post the same on the Department's website.

(b) Authorization to Collect Fees for Services and Fines. The Guam Fire Department shall establish, in accordance with the Administrative Adjudication Law, *no later than* August 1, 2006, a schedule of (i) fees for the following services: non-emergency use of an ambulance primarily for transportation as opposed to emergency medical care under circumstances where the person ordering the same does *not* reasonably believe that a *bona fide* medical emergency condition exists, making building inspections, or issuing burning permits; and (ii) fines for creating fire hazards, disobeying permit conditions, failing to correct hazardous conditions reported as a result of building inspections, or non-compliance with the Fire Code. All fees and fines collected under such approved schedule shall be deposited in the Fund.

(c) No Transfer Authority by *I Maga'lahren Guåhan*. *I Maga'lahren Guåhan* may *not* use his transfer authority to utilize any monies deposited in the Fund.

**SOURCE:** Added by P.L. 22-52:2 (12/2/93). Amended by P.L. 28-068:II:II:20 (Sept. 30, 2005).

### **10 GCA § 72107. Rendering Appointments Permanent.**

A Guam Fire Department employee who has occupied the position of Firefighter II or Fire Service Specialist on a temporary basis for more than five (5) years shall be deemed to be promoted to and occupy said position on a permanent basis. The Director of Administration shall execute the necessary personnel actions to document such promotions.

**SOURCE:** Added by P.L. 28-068:II:II:23 (Sept. 30, 2005).

### **10 GCA § 77110.1. Police Commander.**

The Chief of Police shall select a *Police Commander*, who shall be a uniformed classified officer to hold the rank of Colonel. The Police Commander shall meet the following minimum qualifications, in addition to those prescribed by the Director of Administration:

(a) be at least thirty (30) years of age; and

(b) graduated with a bachelor's degree in Police Science, Criminal Justice Administration, or closely related field or discipline, at a nationally accredited institution; and

(c) have no felony, domestic or family violence conviction; and

(d) submit to and pass a drug screening test, including, but not limited to, a urinalysis test.

**COMMENT:** Effective January 1, 2006, reference to the "Civil Service Commission," amended to "Director of Administration" pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

## **10 GCA § 80104. Powers.**

The hospital shall have and exercise each and all of the following powers:

(a) Maintain and operate a facility providing acute, chronic and all other health care services, including those services specifically provided by contract for the Department of Mental Health and Substance Abuse, for the people of the Territory. [Amended by P.L. 17-21].

(b) Establish a schedule of fees, in accordance with 10 GCA §80105, to be charged for care and services at or by the hospital. The schedule of fees shall be sufficient to recover the operating costs and fixed costs and to generate such revenue as is necessary to make the hospital self-sustaining. The cost of medical care and services rendered to any person under the Old Age Assistance for the Aged Program, Aid to the Blind Program, and Aid to the Permanently and Totally Disabled Program of the Social Security Act, as well as those persons considered medically indigent as the term is defined in Chapter 2 of this Title shall be paid by the Department of Public Health and Social Services. [Amended by P.L. 15-141, and further amended by P.L.'s 17-83 and 18-26:7].

(c) Acquire, subject to the laws of Guam, by grant, purchase, gift, devise or lease, and hold and use any real property necessary or convenient or useful for the carrying on of any of its powers pursuant to the provisions of this Article; upon written certification of the Administrator, countersigned by the Chairman of the Board, that specified and specialized medical equipment and related supplies are needed immediately for the health and welfare of the patients of the Hospital in particular, and the people of Guam in general, the Guam Memorial Hospital Authority shall be exempt from the provisions of §§5210 and 5211 of Title 5, Guam Code Annotated, in the acquisition of the medical equipment and related supplies specified in such written certification of the Administrator; provided, that the Hospital shall use its best judgment and efforts to secure the best equipment and supplies at the lowest cost, utilizing businesses licensed to do

business on Guam whenever possible. [Amended by P.L. 16-124; further amended by P.L. 20-228 as subsection (c) of §80103.]

(d) Establish its internal organization and management;

(e) Perform such acts as may be reasonably necessary to accomplish the purpose for which it was formed, subject, however, to the following conditions:

(1) The purchase of all supplies and materials and the construction of all works shall be subject to the provisions of §80111 of this Article;

(2) No contract requiring an expenditure of more than Ten Thousand Dollars (\$10,000) shall be entered unless the Attorney General shall have approved its form and found that its purpose is within the powers of the hospital; [Amended by P.L. 16-7 and 16-98]

(f) Adopt a seal;

(g) Sue or be sued in its own corporate name;

(h) Employ, retain or contract for the services of qualified managers, specialists or as individuals or as organizations;

(i) Adopt such rules and regulations pursuant to the Administrative Adjudication Act as may be necessary for the exercise of the hospital's powers, performance of its duties and administration of its operations;

(j) Adopt and maintain a uniform system of accounting;

(k) Adopt and maintain a travel authorization policy notwithstanding any law to the contrary;

(l) Adopt rules and regulations governing selection, compensation, promotion, performance evaluation, disciplinary action and other terms and conditions of employment affecting personnel, subject to the provisions of the Administrative Adjudication Act. Such rules and regulations shall provide for the employment and retention of persons on the basis of merit, and shall include an orderly and systematic method of recruitment and the establishment of a list of qualified applicants for employment purposes, *except* that compensation for non-medical personnel shall remain consistent with compensation plans and pay scales as determined by the Civil Service Commission or its successor. *Non-medical personnel* are defined as personnel employed by the Authority who are *not* physicians, nurses, medical technicians or technologists, licensed or certificated therapists of any sort, laboratory technicians, personnel certificated in any medical or nursing field, nurse practitioners, pharmacists or other medical personnel.

(m) Do any and all other things necessary to the full and convenient exercise of the above powers;

(n) Contract with a corporation to exercise any or all the powers of the Administrator and of those officers authorized by §80108 of this Article, if the Board so chooses. Any such contract shall be subject to the provisions of Subsection (e)(2) of this Section; [Amended by P.L. 16-98]

(o) Arrange a line of credit not to exceed Three Million Dollars (\$3,000,000) with banks or other lending institutions licensed on Guam. All terms of the line of credit agreement shall be negotiated by the Authority in the best interests of the people of Guam. The terms of the line of credit agreement shall include the following:

(1) The line of credit shall be used by the Authority when a cash shortage which hampers the operation of the hospital is imminent, provided that the line of credit shall not be used to finance capital improvements or non-health care professionals.

(2) No charge shall be levied by a lender for opening the line of credit.

(3) The interest rate shall be subjected to negotiation between the Authority and the lender. Such interest rate shall be computed on a monthly average and based on the actual amount extended to the Authority.

(4) Interest earned by the lender shall be exempt from taxation by the government of Guam.

(5) The Authority may pledge only its revenues as a security for repayment of the loan.

(6) Any money borrowed shall be repaid within three (3) years. In no case shall any amount borrowed be refinanced permitting repayment more than three (3) years after the loan is made. [Amended by P.L. 23-112:2.]

(p) Acquire in accordance with the Procurement Law (5 GCA Chapter 5) and hold and use any personal property or construct any projects necessary or convenient or useful for carrying on of any of its powers pursuant to the provisions of this Article. [Added by P.L. 16-124].

(q) Arrange a line of credit not to exceed Five Million Dollars (\$5,000,000) with banks or other lending institutions licensed on Guam for the purchase of medical equipment. The terms of the line of credit shall be identical to the provisions of items (2) through (4) of subsection (o) of this Section. Any money borrowed shall be repaid within five (5) years. As part of any loan agreement the Board shall identify the source of the repayment and such source shall constitute

a trust fund of the Authority which shall be used for no purpose other than repayment until the sum borrowed is repaid in full. [Added by P.L. 18-26:13].

(r) Arrange, with the consent of the Governor, a loan not to exceed Twenty-seven Million Dollars (\$27,000,000). The loan shall be upon such terms and conditions as established by a Loan Agreement, and such other documents and instruments as are executed by the Authority with the approval of the Governor containing such terms as are consistent with this Subsection. The Governor, on behalf of the government of Guam, is authorized to guaranty the loan and to grant the pledge of Section 30 revenues as provided below as security for repayment of the loan.

(1) The loan shall be for such term, not to exceed twelve (12) years, and upon such conditions as to maturity and repayment as agreed by the Lender and the Authority with the approval of the Governor. The rate of interest upon the loan shall be as negotiated between the Lender and the Authority and approved by the Governor.

(2) Interest shall be computed upon the declining balance of principal outstanding from time to time upon the loan.

(3) Prepaid charges shall not be levied by the Lender for making the loan. The Lender may charge and be paid either from the loan funds or other funds of the Authority or of the government of Guam its expenses incurred in making the loan, including legal fees, recording, title insurance and appraisal fees, and like expenses.

(4) Interest earned by the Lender shall be exempt from taxation by the government of Guam, including without limitation taxation under the Guam Gross Receipts Tax and Guam Territorial Income Tax.

(5) The government of Guam waives immunity from suit as to the government of Guam, the Guam Memorial Hospital Authority and any other agency or instrumentality of the government of Guam making any mortgage, pledge, security agreement or other instrument in connection with the loan.

(6) The provisions of Title 10 Guam Code Annotated § 80104(e)(2) shall be inapplicable to the loan and to all documents given in connection therewith.

(7) The provisions of Title 12 Guam Code Annotated §2103(k) shall be inapplicable to the loan.

(8) The loan may be secured by:

(i) pledge of revenues of the Guam Memorial Hospital Authority;

(ii) a guaranty of the government of Guam;

(iii) pledge of all or any part of the revenues derived by the government of Guam under Section 30 of the Organic Act (Any such pledge shall be made by a certificate approved by the Governor authorizing the pledge and the terms and conditions thereof. The Governor may appoint a trustee authorized to receive revenues derived by the government of Guam under Section 30 of the Organic Act, and after applying such revenues to obligations under prior loans or bonds issued by the government of Guam and secured thereby, applying them to obligations under the loan. Any such pledge shall be valid and binding from the time the pledge is made, subject to prior pledges upon such revenues. The revenues pledged and thereafter received by the government of Guam or by any trustee appointed pursuant hereto shall upon receipt immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the government of Guam irrespective of whether the parties have notice thereof.); and

(iv) mortgage upon and security interest in the real property, improvements and related facilities known as the Guam Memorial Hospital, and the equipment, furniture, fixtures located thereat. In furtherance of the mortgage, any agency or instrumentality of the government of Guam having an interest in the Guam Memorial Hospital facility, including without limitation the Authority and the Chamorro Land Trust Commission, shall, upon the authorization of the Governor, enter into and join in such mortgage. The Lender is authorized to enforce the mortgage in accordance with its terms, and in the event of default, title may be conveyed in accordance with the terms of the mortgage.

(9) There are appropriated from any pledged revenues of the Authority, the pledged Section 30 funds, and from the General Fund such sums as will in each year equal the amount of money necessary to pay the principal and interest and other obligations upon the loan.

(s) With the concurrence Negotiate with appropriate Federal official (Secretary of Defense, officials of Tripler Army Hospital, etc.) for the implementation of §105(k) of the Compact of Free Association Act of 1985 with the Freely Associated States of Micronesia.

All terms of the agreement shall be negotiated by the Guam Memorial Hospital Authority in the best interests of the people of Guam. The agreement must be submitted to the Governor for his review and approval.

(t) Arrange a line of credit not to exceed Twelve Million Dollars (\$12,000,000) with banks or other lending institutions licensed on Guam. All terms of the line of credit agreement shall be negotiated by the Authority and I Maga'lahren Guåhan [Governor] in the best interests of the people of Guam. The terms of the line of credit shall include the following:

(1) the line of credit shall be used by the Authority when a cash shortage threatens the operation of the Hospital, and provided that the loan shall not be used to finance capital improvements or the hiring of non-health care professionals not involved with providing direct patient care or patient care support, except for funding of the Guam Memorial Hospital Authority long-term care facility in Barrigada Heights;

(2) no charge shall be levied by a lender for making the loan;

(3) the interest rate shall be subjected to negotiation between the Authority, I Maga'lahren Guåhan and the lender; such interest rate shall be computed on a monthly average and based on the actual amount extended to the Authority; and

(4) interest earned by the lender shall be exempt from taxation by the government of Guam.

(5) I Maga'lahren Guåhan is authorized to pledge funds which Guam shall receive from the State Attorneys General Tobacco Litigation, as provided by Public Law Number 24-174, or the General Fund, or both funds in any combination, as a security for repayment of the loan, in addition to any revenues which may be pledged by the Authority. I Maga'lahren Guåhan and the Authority is hereby authorized to execute the loan agreement and other necessary documentation.

(6) The line of credit authorized in this Act shall not be used in the calculation for rate relief in any rate methodology for any rate case before the Public Utilities Commission.

**SOURCE:** GC § 49003, Subsection (r) added by P.L. 24-14:44, amended by P.L. 24-058:2, repealed and reenacted by P.L. 24-59:IV:21. Subsection (s) added by P.L. 24-173:2. Subsection (t), relettered from subsection (s) by Compiler, added by P.L. 25-150:2. Subsection (l) added by P.L. 28-068:II:III:33 (Sept. 30, 2005).

**COURT DECISIONS:** SUPER.CT. 1981. The Organic Act of Guam is not inconsistent with 12 GCA § 80104 which allows the Guam Memorial Hospital Authority to sue and be sued. The Claims Act provisions are not applicable to the present case. *Ramos v. Guam Memorial Hospital Authority*, Civil Case #172-81. (The holding of this case has been reversed by the

adoption of a new Government Claims Act. See Government Code § 6500 et seq. as reenacted by P.L. 17-29.)

## **10 GCA § 80106. Board of Trustees.**

(a) All powers vested in the Guam Memorial Hospital Authority, except as provided herein, shall be exercised by the Board, which shall consist of nine (9) members, called 'Trustees.' The nine (9) Trustees shall consist of four (4) members representing the general public, who shall possess background and experience in healthcare, management, finance or any other business-related field; one (1) member representing the Allied Health Professions; two (2) members representing the Guam Nursing Association; two (2) members representing the Guam Medical Society. I Maga'lahren Guåhan shall appoint the members with the advice and consent of I Liheslaturan Guåhan. A Trustee shall serve a term of five (5) years. All vacancies occurring in the office shall be filled in the same manner as full-term appointments, but only for the unexpired term of the Board member whose vacancy is being filled. The Governing Board shall elect a Chairperson, Vice-Chairperson, Secretary and Treasurer from among its membership every two (2) years.

(b) Five (5) Trustees shall constitute a quorum of the Board for the transaction of business. The concurrence of five (5) members present shall constitute official action of the Board. The Board may adopt such rules and regulations governing the conduct of its affairs.

(c) Each Director shall receive the sum of Fifty Dollars (\$50.00) for his attendance at any meeting of the Board, but such compensation shall not apply to more than four (4) meetings or exceed Two Hundred Dollars (\$200) in any one calendar month. No Director shall receive any other compensation, but shall be reimbursed for actual travel, subsistence and out-of-pocket expenses incurred in the discharge of his responsibilities, including authorized attendance at meetings held away from Guam.

(d) The Guam Memorial Hospital Authority shall be liable for the negligent act of any hospital employees or officer if the Board knew or had notice that said employee or officer was inefficient and incompetent to perform the services for which he was hired, or said Board retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.

(e) No Director shall be liable for any decision made in the good faith non-malicious fulfillment of his duties.

(f) The Board shall be liable as fiduciaries in the execution of their duties.

(g) No Trustee shall be actively engaged in the selling of services or goods to the Hospital in excess of One Hundred Thousand Dollars per year. This

restriction shall not apply to health care professionals who provide direct patient care services to the Hospital

(h) No Trustee shall act when a conflict of interest occurs. The Trustee shall disclose the nature of the conflict of interest to the members present and abstain from any discussion or voting on the issue until it has been disposed of by action of the remaining members present. If a Trustee knowingly fails to disclose a conflict of interest in the manner listed herein and subsequently votes on an action to be taken by the Board, then the vote of the conflicted Trustee shall not be counted for purposes of constituting official Board action. Any Trustee who knowingly fails to disclose a conflict of interest in the manner listed herein shall be subject to immediate removal from the Board by I Maga'lahaen Guåhan [Governor of Guam].

(i) The Board shall, in accordance with all relevant procurement laws, contract with a professional management firm with at least ten (10) years demonstrated experience in hospital management in the United States, to manage the hospital facility and all of its functions. The management firm shall exercise, on the Board's behalf, all of the executive authority granted to the Board by the laws of Guam, provided that the Board shall retain its rulemaking authority and shall monitor the firm's performance of the contract. The contract shall be for a period of five (5) years. *If* the contract is terminated or becomes invalid for any reason, all authority shall revert to the Board, which shall appoint an interim manager until a new contractor is selected. The Board shall determine the firm's compensation, which shall be paid from the Hospital Operations Fund.

(1) The management firm shall:

(aa) manage the Guam Memorial Hospital Authority in accordance with the laws of Guam;

(bb) provide periodic reports to the Board on the operations and functioning of the hospital;

(cc) recommend changes in the law to improve the hospital's functioning and create a written plan to achieve, within five (5) years, JCAHO accreditation for the hospital, with said plan to include benchmarks by which to measure progress towards this goal; and

(dd) provide training to hospital staff as shall be specified in the contract.

**SOURCE:** GC § 49004; Subsections (a) amended by P.L. 15-41; (b) amended by P.L. 15-55; amended by P.L. 19-4:16(d), added by P.L. 19-4:17(f). Subsections (a) and (b) amended by P.L. 25:150:9, 10. Subsections (g) & (h) added by P.L. 25-150:11, 12. Subsection (i) added by P.L. 28-068:II:III:35 (Sept. 30, 2005).

**10 GCA § 80107. Administrator.**

(a) The Board shall hire or contract an Administrator, who shall be its Chief Executive Officer. The Administrator shall meet the following minimum qualifications:

(i) shall have graduated from a recognized college or university with a Master's degree in hospital administration, health services management or a related field, plus six (6) years of experience in hospital administration or healthcare services management, of which three (3) years must have been experience as an administrator in a hospital setting; or

(ii) shall have graduated from a recognized college or university with a Bachelor's degree in hospital administration, health services management, or a related field, plus eight (8) years of experience in hospital administration or healthcare services management, of which five (5) years must have been experience as an administrator in a hospital setting;

(iii) shall have experience in negotiating and directing activities related to obtaining reimbursement from government programs, such as Medicare, Medicaid or the Medically Indigent Program of the government of Guam; and

(iv) shall have experience in negotiating contracts with external parties, including third party payers, vendors, insurance carriers and other contracting parties.

(b) The Administrator shall serve at the pleasure of the Board, which shall be responsible for the annual evaluation of the Hospital Administrator's performance. The Board, in consultation with the Director of Administration, may hire the Hospital Administrator by direct employment as an unclassified employee of the government of Guam, or by personal services contract, as the Board and the Director of Administration deem necessary to attract and retain a qualified Administrator. Notwithstanding the provisions of 4 GCA § 6206.1, the salary of the Hospital Administrator shall be established by the Director of Administration. The Director of Administration shall consider income levels of private and government practitioners on Guam and worldwide. Implementation of the salary structure is subject to the approval of the Director of Administration.

(c) The Administrator shall have full charge and control of the operations and maintenance of the Hospital. The powers of the Administrator shall include:

(i) to recommend rules and regulations for adoption by the Board of Trustees and to see that all rules and regulations of the Hospital are enforced;

(ii) to ensure compliance with all federal and local regulations;

(iii) to act as liaison to the governing body for the medical, nursing, and other professional staff and all facility departments;

(iv) to attend, unless excused by the Board, all meetings of the Board and to submit written reports on the affairs of the Hospital each month;

(v) to keep the Board advised on the needs of the Hospital and approve demands for payment of obligations within the purposes and amounts authorized by the Board;

(vi) to prepare and cause to be prepared all plans and specification for purchased services and the construction and repair of equipment and facilities operated by the Hospital and serve as the Hospital's Chief Procurement Officer;

(vii) to devote that person's entire time to the business of the Hospital, to select and appoint the employees of the Hospital except as otherwise provided in this Chapter, and to plan, organize, coordinate and control the services of such employees in the exercise of the powers of the Hospital under the general direction of the Board;

(viii) to prepare within one hundred twenty (120) days from the end of each fiscal year an annual report of the results of the operations for the preceding fiscal year and the financial status of the Hospital on the last day thereof;

(ix) to perform and issue such other additional duties as the Board may require; and

(x) to arrange for the burial of any fetus not claimed by its mother or father within thirty (30) days.

**SOURCE:** GC § 49005; Subsection (b)(9) added by P.L. 15-112. Section repealed/ reenacted by P.L. 25-150:8. Subsection (b) amended by P.L. 25-183:1. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

### **10 GCA § 80107.1. Chief Financial Officer.**

(a) The position of Chief Financial Officer is established within the Guam Memorial Hospital Authority. The Chief Financial Officer shall meet the following minimum qualifications:

(i) shall have graduated from a recognized college or university with a Master's degree in accounting, finance, economics, business administration or a related field, plus seven (7) years of experience in hospital administration or healthcare services management, of which five (5) years

must have been as an administrator for general accounting and fiscal services; or

(ii) shall have graduated from a recognized college or university with a Bachelor's Degree in accounting, finance, economics, business administration or a related field, plus nine (9) years of experience in hospital administration or healthcare services management, of which seven (7) years must have been as an administrator responsible for general accounting and fiscal services;

(iii) shall have experience in negotiating and directing activities related to obtaining reimbursement from Federal government programs, such as Medicare, Medicaid or the Medically Indigent Program of the government of Guam; and

(iv) shall have experience in negotiating contracts with external parties, including third party payers, vendors, insurance carriers and other contracting parties.

(b) The Chief Financial Officer shall report directly to the Hospital Administrator. The Hospital Administrator, in consultation with the Director of Administration, shall hire the Chief Financial Officer by direct employment as an unclassified employee of the government of Guam, or by personal services contract, as is deemed necessary by the Hospital Administrator and the Director of Administration to attract and retain a qualified Chief Financial Officer. Notwithstanding the provisions of 4 GCA § 6206.1, the salary of the Chief Financial Officer shall be established by the Director of Administration. The Director of Administration shall consider income levels of private and government practitioners on Guam and worldwide. Implementation of the salary structure is subject to the approval of the Director of Administration.

**SOURCE:** Added by P.L. 25-150:13. Codified by Compiler. Subsection (b) amended by P.L. 25-183:2 as an amendment to P.L. 25-15:13(b). Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

### **10 GCA § 80115. Mandatory Annual Budget.**

On March 30, 2006 for Fiscal Year 2007, and January 30 for the succeeding fiscal years, the Board shall submit a comprehensive program and financial plan to *I Liheslaturan Guåhan* in a budget format utilized by the Bureau of Budget and Management Research for the Executive Branch. The program and financial plan shall contain the information set out in 5 GCA §5106, which is used by Executive Branch departments and agencies. If *I Liheslaturan Guåhan* does not reject the comprehensive program and financial plan by September 30, the program and plan is deemed approved.

**SOURCE:** Added P.L. 19-5:54, as amended by P.L. 19-10:35. Amended by P.L. 28-068:II:III:27 (Sept. 30, 2005).

### **10 GCA § 87103. Administrator.**

There shall be within the Division an Administrator who shall act as the Chief Officer and direct the operations of the Division. The Administrator shall be hired by the Director and shall be in the classified service as established by the Director of Administration. The Administrator shall receive a salary equal to that of the Director.

**SOURCE:** Added by P.L. 19-19:2. Effective January 1, 2006, reference to the “Civil Service Commission,” amended to “Director of Administration” pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

### **10 GCA § 87108. Safety Inspectors and Other Employees.**

In addition to clerical personnel hired by the Administrator with the concurrence of the Director and in accordance with the personnel and compensation laws, the Division shall be staffed by six (6) Safety Inspectors, each representing one of the following safety disciplines: heavy construction, light construction, industrial hygiene, hazardous substance control, electrical and fire engineering. In order to qualify as a Safety Inspector, a person must meet the qualifications established by the Director of Administration. Safety Inspectors shall be selected by the Administrator with the concurrence of the Director and will be classified employees of the Government of Guam to be established by the Director of Administration.

**SOURCE:** Added by P.L. 19-19:2. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

### **10 GCA § 90100. Title.**

This chapter shall be known, and may be cited, as the *Clean Indoor Air Act of 1992*.

**SOURCE:** This entire Chapter was enacted as 10 GCA Chapter 89 by P.L. 21-139:1 and passed on Oct. 1, 1992. The Compiler placed this Chapter as Chapter 90 because Chapter 89 was already occupied with another law that was not repealed.

**NOTE:** Pursuant to P.L. 28-080:2 and 6 (Dec. 9, 2005), this section will be amended effective 150 days from date of enactment as follows:

#### **“§ 90100. Title.**

This Chapter shall be known, and may be cited, as the ‘*Natasha Protection Act of 2005*.’”

### **10 GCA § 90103. Definitions.**

The following words and phrases, when used in this chapter, shall be construed as follows:

*Bar* means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may ---contain a bar, the term *bar* shall not include the restaurant dining area.

*Business* means any sole proprietorship, partnership, corporation or other business entity formed for profit-making purposes, including retail establishments as well as professional corporations and other entities where legal, medical, or other professional services are delivered.

*Dining area* means any enclosed area containing a counter or tables upon which meals are served.

*Employee* means any person who is employed by an employer in consideration of direct or indirect monetary wages or profit.

*Employer* means any business, including the government of Guam and any of its autonomous agencies, which employs the services of one (1) or more persons.

*Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors and passageways).

*Place of employment* means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms, and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

*Public place* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, health care facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail stores, theaters and waiting rooms.

*Restaurant* means any coffee shop, cafeteria, public school cafeteria or eating establishment which is operated by, under contract to, or on behalf of a business or employer as defined in this § 90103.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

*Service line* means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind.

*Smoking* means inhaling, exhaling, or burning any lighted cigar, cigarette, or other tobacco product.

*Sports arena* means the enclosed area of any sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

**NOTE:** Pursuant to P.L. 28-080:3 and 6 (Dec. 9, 2005), this section will be amended effective 150 days from date of enactment as follows:

**“§ 90103. Definitions.**

The following words and phrases, when used in this Chapter, shall be construed as follows:

*Bar*, as defined for this Chapter, means an establishment or area devoted to the serving of alcoholic beverages for consumption by guests on the premises in which the serving of food is only incidental to the consumption of such beverages and where the sale of alcoholic beverages exceeds fifty percent (50%) of the establishment’s gross revenues. The term *bar* applies to an area within a restaurant establishment when:

- (a) the serving of alcoholic beverages is located within a physically enclosed area apart from the dining area; or
- (b) the serving of alcoholic beverages is located at an open and well-ventilated area apart from the dining area; or
- (c) the serving of alcoholic beverages exceeds fifty percent (50%) of the establishment’s gross revenue between the hours of 10:00 p.m. and 4:00 a.m. during those hours.

*Business* means any sole proprietorship, partnership, corporation or other business entity formed for profit-making purposes, including retail establishments, as well as professional corporations and other entities where legal, medical, or other professional services are delivered.

*Dining Area* means any enclosed area containing a counter or tables upon which meals are served.

*Employee* means any person who is employed by an employer in consideration of direct or indirect monetary wages or profit.

*Employer* means any business, including the government of Guam and any of its autonomous agencies, which employs the services of one (1) or more persons.

*Enclosed Area* or the term *Enclosed*, when used relative to a structure or building, means all space between a floor and ceiling which is completely enclosed on all sides by solid walls or windows (exclusive of doors and passageways) having an air circulation system completely separate from the

dining area.

*Smoke Ventilation Device* means devices that are inspected and regulated by the Guam Environmental Protection Agency and approved by the Department of Public Health and Social Services (DPH&SS) pursuant to 10 GCA §21101 and §21102, in accordance with the standards of the American Society of Heating, Refrigeration and Air Conditioning Engineers, which adequately improves air quality within enclosed areas where smoking occurs consisting of: (a) an approved mechanical device that aspirates air contaminated by smoking within an enclosed area to an external open area; or (b) an approved aeration device that filters, mechanically or ionically, air contaminated by smoking within an enclosed area improving air quality standards.

*Open Area* means an outdoor area or all space between a floor and ceiling which is enclosed by *no more than sixty percent (60%)* on all sides by solid walls or windows.

*Place of Employment* means any enclosed area under the control of an employer which employees normally frequent during the course of employment including, *but not limited to*, work areas, employee lounges and restrooms, conference rooms, and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

*Public Place* means any enclosed area to which the public is invited or in which the public is permitted, including, *but not limited to*, banks, health care facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

*Restaurant*, as defined for this Chapter, means any retail eating establishment other than a bar where food is served or provided for on-site consumption by seated patrons that is regulated by the Department of Public Health and Social Services, including any private food establishment or club where food is served or provided for on-site consumption by seated patrons in which only members or their guests are permitted. If a restaurant includes an area devoted to the serving of alcoholic beverages that is not enclosed or is not located within a well-ventilated open area apart from the dining area, that area shall be deemed part of the "restaurant," not a separate "bar," as used in this Chapter.

*Retail Tobacco Store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

*Service Line* means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind.

*Smoking* means inhaling, exhaling, or burning any lighted cigar, cigarette, pipe, weed, plant, tobacco product or related substance or product.

*Sports Arena* means the enclosed area of any sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events."

## **10 GCA § 90105. Prohibition of Smoking in Public Places.**

Smoking shall be prohibited in all enclosed public places, including, but not limited to the following places:

(1) Elevators.

(2) Buses, taxicabs, airplanes, and other means of public transit, and ticket, boarding, and waiting areas of public transport depots.

(3) Restrooms.

(4) Service lines.

(5) All areas available to and customarily used by the general public in all businesses patronized by the public.

(6) Restaurants; *provided*, however, that this prohibition does not prevent (i) designation of a contiguous area within a restaurant that contains a maximum of not more than fifty percent (50%) of the seating capacity of the restaurant as a smoking area, or (ii) providing separate rooms for smokers and nonsmokers, so long as the rooms designated for smoking do not contain more than fifty percent (50%) of the seating capacity of the restaurant.

(7) Public area of aquariums, galleries, libraries, and museums when open to the public; *provided*, however, that this prohibition does not prevent the designation of a separate room for smoking in such areas.

(8) Any building not open to the sky which is primarily used for exhibiting motion pictures, stage shows, musical recitals or other performances, except when smoking is part of a stage production.

(9) Sports arenas and convention halls, except in designated smoking areas therein with adequate and effective ventilation which removes smoke and purifies the recirculated air.

(10) Every place of meeting or public assembly during such time as a public meeting is in progress.

(11) Waiting rooms, hallways, wards and semi-private rooms for health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.

(12) Polling places.

**NOTE:** Pursuant to P.L. 28-080:4 and 6 (Dec. 9, 2005), this section will be amended effective 150 days from date of enactment as follows:

**“§ 90105. Prohibition of Smoking in Public Places.**

(a) Smoking shall be prohibited in all enclosed public places, including, *but not limited to*, the following places:

- (1) Elevators.
- (2) Buses, taxicabs, airplanes, and other means of public transit, and ticket, boarding, and waiting areas of public transport depots.
- (3) Restrooms.
- (4) Service lines.
- (5) All areas available to and customarily used by the general public in all businesses patronized by the public.
- (6) Restaurants.
- (7) Public areas of aquariums, galleries, libraries and museums when open to the public.
- (8) Any building not open to the sky which is primarily used for exhibiting motion pictures, stage shows, musical recitals or other performances, except when smoking is part of a stage production.
- (9) Sports arenas and convention halls.
- (10) Every place of meeting or public assembly during such time as a public meeting is in progress.
- (11) Waiting rooms, hallways, wards and semi-private rooms for health facilities, including, *but not limited to*, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
- (12) Polling places.

(b) Any owner, operator, manager or other person who controls any establishment, facility or area described within this Chapter where smoking is not or in-part regulated, may prohibit smoking to occur within the entire establishment, facility or area and §90109, §90110, and §90111 of this Chapter shall apply.”

### **10 GCA § 90107. Where Smoking Not Regulated.**

(a) Notwithstanding any other provisions of this chapter, the following areas shall not be subject to the smoking restrictions of this chapter:

- (1) Bars.
- (2) Private residences, except when used as child care facility or health care facility.
- (3) Hotel and motel rooms rented to guests.
- (4) Retail tobacco stores.
- (5) Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
- (6) A private enclosed office work place occupied exclusively by one (1) or more smokers.

**NOTE:** Pursuant to P.L. 28-080:5 and 6 (Dec. 9, 2005), this section will be amended effective 150 days from date of enactment as follows:

“§ 90107. **Where Smoking Not Regulated.**

(a) Notwithstanding any other provisions of this Chapter, the following areas shall not be subject to the smoking restrictions of this Chapter:

(1) Bars.

(2) Private residences, except when used as child care facility or health care facility.

(3) Hotel and motel rooms rented to guests.

(4) Retail tobacco stores.

(5) A private enclosed office work place occupied exclusively by one (1) or more smokers.

(b) All public places and facilities located within an enclosed area where smoking is permitted or allowed to any extent by this Chapter shall employ an appropriate smoke ventilation device. Smoking shall not be permitted at any time within enclosed areas not meeting the requirements of this provision.”