

**ORDINANCE NO. 21-7( )**

AN ORDINANCE TO AMEND ARTICLE 3, SMOKING, OF CHAPTER 7, HEALTH AND SAFETY, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Article 3, Smoking, of Chapter 7, Health and Safety, is hereby reordained and amended as follows:

**By Amending:**

- Sec. 7-300 ~~Declaration of findings and policy~~ Purpose
- Sec. 7-301 Definitions
- Sec. 7-302 Smoking prohibited in certain public places
- Sec. 7-303 Smoking in certain private places of employment
- Sec. 7-305~~4~~ Exemptions
- Sec. 7-306~~5~~ Designated smoking areas ~~generally~~
- Sec. 7-307~~6~~ Posting signs
- Sec. 7-308~~7~~ Enforcement
- Sec. 7-309~~8~~ Violations

**By Repealing:**

Sec. 7-304 Designated no-smoking areas in restaurants

**CHAPTER 7**

**HEALTH AND SAFETY**

**ARTICLE 3. SMOKING**

**Sec. 7-300 ~~Declaration of findings and policy~~ Purpose.**

The Board of Supervisors finds and declares that exposure to environmental tobacco smoke is a serious hazard to the public health, welfare, peace, and safety and the quality of life; that a substantial body of scientific and medical evidence exists which documents this hazard including, but not limited to, the 1986 Report of the Surgeon General entitled "The Health Consequences of Involuntary Smoking"; that both smokers and non-smokers have individual rights which are important to preserve; and that it is the object of this article to help minimize the health hazards of smoking, particularly as they exist in certain public places and places of employment, while simultaneously recognizing the sometimes competing interests of smokers and non-smokers as well as the burdens hereby imposed on persons in management and control of the places regulated.

(6-7-89; Code 1988, § 16.1-2; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

State Law reference – Va. Code § [15.2-2828](#).

**Sec. 7-301 Definitions.**

The following definitions apply to this article unless the context requires a different meaning:

~~"Bar or lounge area" means an area or a room used primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the sale of food is merely incidental to~~

~~the sale of alcoholic beverages. Although a restaurant may contain a bar, the word "bar" does not encompass an entire restaurant or any dining area.~~

"Child care facility" means any facility which is a "child day center" or a "family day home" as defined by Virginia Code § [63.2-100](#).

"Food store" means any supermarket or grocery store which is designed and arranged to display food products and which has as its primary business purpose the sale of food products to consumers for consumption off the premises, and not for resale.

"Health care facility" means any office or institution providing individual care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of any physician, dentist, chiropractor, psychologist, psychiatrist, physiologist, podiatrist, optometrist, or optician.

"Public meeting" means any meeting or assembly held by a County public body, or any County committee, department, or office in a building that is open to the public.

"Public place" means an enclosed area available for use by or accessible to the general public during the normal course of business conducted by either private or public entities.

"Shared work area" means any enclosed area on the premises of a place of employment: (i) that is a private work area in which two or more employees are assigned to work for most of their work day; (ii) where ~~such~~ those employees must share common work spaces, equipment or facilities; and (iii) where each ~~such~~ of those employees is aware of or readily available to observe the activities of others taking place in ~~his or her~~ the employee's work area.

"Smoking or to smoke" means the act of smoking or carrying a lighted or smoldering cigar, cigarette, or pipe of any kind, or lighting a cigar, cigarette, or pipe of any kind.

"Theater" means any indoor facility or auditorium, open to the public, which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture, or other similar performance.

(6-7-89; Code 1988, § 16.1-3; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

**State Law reference** – Va. Code § [15.2-2828](#)

### **Sec. 7-302 Smoking prohibited in certain public places.**

Except as otherwise provided in this article, it is unlawful for any person to smoke in any of the following public places:

- A. *Elevators*. In an elevator, regardless of capacity, except in those elevators in single-family dwellings.
- B. *Health care facilities*. In any health care facility, regardless of capacity, but with the exception of private patient rooms designed for only one patient.
- C. *Public meetings*. In any public meeting attended by more than two persons.
- D. *Theaters*. In any theater, except smoking by performers as part of the production.

- E. *Cultural facilities.* In any art gallery, library, museum, or similar cultural facility, supported in whole or in part with public funds.
- F. *County buildings.* In the County office buildings and any other public building that is wholly or partially owned or leased by the County, is located within and is a part of the corporate limits of the County and is under the direct and exclusive management of the County Executive's Office.
- G. *Restaurants.* ~~In the designated no-smoking area of any restaurant that is subject to the provisions of County Code § 7-304~~ In any restaurant, as provided by Virginia Code § 15.2-2825.
- H. *Schools and child care facilities.* In any elementary or secondary school, or child care facility, whether public or private.
- I. *County owned or leased vehicles for public transportation.* In any vehicles owned or leased by the County and used regularly for public transportation, including, but not limited to, transit buses and school buses.
- J. *Food stores.* In any food store.
- K. *Retail stores.* In any retail store.
- L. *Financial institutions.* In any bank or savings and loan.
- M. *Shopping malls.* In any enclosed shopping mall.

(6-7-89; Code 1988, § 16.1-4; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

**State Law reference** – Va. Code § [15.2-2828](#).

**Sec. 7-303 Smoking in certain private places of employment.**

- A. *Smoke-free work areas in shared work areas.* Any employer who owns and operates a business within the County and who employs five or more employees must provide, to the extent reasonably practicable, smoke-free work areas for non-smoking employees who work in a shared work area or space that are entered by the general public in the normal course of business or use of the premises.
- B. *Smoking prohibited in shared work areas; exception.* Unless each and every employee in a particular shared work area consents in writing, smoking is prohibited in the shared work areas of an employer subject to this section.
- C. *Designated smoking areas.* Nothing herein prevents an employer subject to this section from establishing lawfully designated smoking areas outside of shared work areas and in accord with County Code § ~~7-3076~~; provided, that employers may not designate restrooms and lunchrooms in buildings they own or manage as smoking areas, unless separate restrooms and lunchrooms are furnished for smokers and non-smokers.

(6-7-89; Code 1988, § 16.1-4; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

**State Law reference** – Va. Code § [15.2-2828](#)

**Sec. 7-304 - Designated no-smoking areas in restaurants.**

- ~~A. Any restaurant having the capacity to seat seventy-five or more persons shall have a designated no-smoking area comprised of at least twenty percent of the seating capacity of such restaurant. The designated no-smoking area shall be located in a separate room, if one is available in the restaurant, or, if no separate room is available, it shall be located in a compact and contiguous area as far removed from areas where smoking is permitted, and closest to the best source of ventilation, as is reasonably possible under applicable building code and fire regulations. In determining whether the designed twenty percent non-smoking area is of sufficient size to comply with this chapter, seats in any room or area which is closed for business at the time of determination shall not be counted.~~
- ~~B. In determining whether a restaurant is subject to the provisions of paragraph (A) of this section, the following shall not be included:~~
- ~~1. Seats in the bar or lounge area of a restaurant;~~
  - ~~2. Seats in any separate room of a restaurant which is used exclusively for private functions; and~~
  - ~~3. Seats located out-of-doors.~~

~~(6-7-89; Code 1988, § 16.1-7; Ord. 98-A(1), 8-5-98)~~

~~State Law reference — Va. Code § [15.2-2825\(A\)](#).~~

**Sec. 7-3054 Exemptions.**

The prohibitions of this article do not apply to the following areas:

- A. *Designated smoking areas.* Lawfully designated smoking areas which comply with County Code § 7-3065.
- B. *Theater lobbies.* Theater lobbies, provided that the lobby is physically separated from the spectator area and a separate lobby is provided for smokers and non-smokers.
- C. *Non-shared work areas.* Office or work areas which are not shared work areas and which are not entered by the public in the normal course of business or use of the premises.
- D. *Tobacco stores.* Tobacco stores that sell tobacco and smoking implements.
- E. *Enclosed public buildings.* Areas within enclosed public buildings which are being used as private dwelling units or are occupied by tenants who are leasing space from the County not subject to any express prohibitions in this article.
- F. *Courthouses.* Courthouses owned or leased by the County.
- G. *Health care facilities treating addictions or psychiatric disorders or illnesses.* Health care facilities or portions thereof which engage primarily in the treatment of patients suffering from alcohol and other chemical dependency or abuse, or psychiatric disorders or illnesses when implementation of the smoking prohibitions contained in this ~~chapter~~ article would, in the written opinion of attending physicians, produce a significant risk of worsening a patient's mental health.

H. *Public buildings of other public entities.* Buildings owned or leased by the City of Charlottesville, the Commonwealth of Virginia (including the University of Virginia), and the federal government and its agencies.

(6-7-89; Code 1988, § 16.1-6; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

State Law reference – Va. Code § [15.2-2828](#).

**Sec. 7-3065 Designated smoking areas generally.**

The owner or person in charge of any building, structure, space, place, or area in which smoking is prohibited may designate separate rooms or areas in which smoking is permitted; provided that:

- A. *Smoking rooms or areas must be separate.* Rooms or areas in which smoking is permitted and which are so designated must be separate, to the extent reasonably practicable, from those rooms or areas entered by the public in the normal course of use of the particular business or institution.
- B. *Ventilation and barriers.* In designated smoking areas, ventilation systems and existing physical barriers shall be used, when reasonably practicable, to minimize the toxic effect of smoke in adjacent non-smoking areas.
- C. *Size of designated smoking area may not defeat purpose of article.* Designated smoking areas must not be so large in number or area in any one building that the fundamental purposes of this article are defeated.

(6-7-89; Code 1988, § 16.1-8; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

State Law reference – Va. Code § [15.2-2828](#).

**Sec. 7-3076 Posting signs.**

A. *Posting signs in buildings; content.* Any person who owns, manages, or otherwise controls any building or area in which smoking is regulated by this article must post in an appropriate place in a clear, conspicuous, and sufficient manner "Smoking Permitted" signs or "No Smoking" signs (or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). The text on these signs must be at least one inch in height, and the international symbol must have a circle of at least four inches in diameter.

~~B. *Signs in restaurants; location and content.* Every restaurant regulated by this article must post at or near its entrance a sign stating that a non-smoking section is available, and whether it is physically separated by a wall from the smoking section (i.e., "partitioned" or "nonpartitioned").~~

~~B.~~ *Optional content.* "No Smoking" signs may, but are not required to, contain language that violation of the no smoking prohibition is punishable by a fine of up to \$100.00.

~~D. *Signs in small restaurants not otherwise subject to this article.* Any restaurants having the capacity to seat fewer than 75 persons and are, therefore, not otherwise subject to this article, must post signs at or near their entrances that adequately inform the public of what~~

~~type of non-smoking or smoking policy is preferred and enforced by management within the restaurant.~~

(6-7-89; Code 1988, § 16.1-9; Ord. 98-A(1); 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

State Law reference – Va. Code § [15.2-2828](#).

**Sec. 7-3087 Enforcement.**

- A. *Duty to enforce.* This article is enforced by the ~~Thomas Jefferson~~ Blue Ridge Health District or any other department or person designated by the County Executive.
- B. *Citizen complaint may initiate enforcement.* Any citizen who desires to register a complaint under this article may initiate enforcement with the ~~Thomas Jefferson~~ Blue Ridge Health District.

(6-7-89; Code 1988, § 16.1-10; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

State Law reference – Va. Code § [15.2-2828](#).

**Sec. 7-3098 Violations.**

A violation of this article by any person is punishable as a class 4 misdemeanor by a fine of up to \$100.00, except for a violation of section 7-302(G), which is subject to enforcement and a fine as provided in Virginia Code § 15.2-2825. Each day that this article is violated is a separate offense.

(6-7-89; Code 1988, § 16.1-11; Ord. 98-A(1), 8-5-98; Ord. [20-7\(1\)](#), 3-18-20, effective 5-1-20)

State Law reference – Va. Code § [15.2-2828](#).

I, Claudette K. Borgersen, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of \_\_\_\_ to \_\_\_\_, as recorded below, at a regular meeting held on \_\_\_\_\_.

\_\_\_\_\_  
Clerk, Board of County Supervisors

	<u>Aye</u>	<u>Nay</u>
Mr. Gallaway	_____	_____
Ms. LaPisto-Kirtley	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Ms. Price	_____	_____