



# Albemarle County

## Legislation Details (With Text)

**File #:** 21-164      **Version:** 1      **Name:**  
**Type:** Ordinance      **Status:** Public Hearing  
**File created:** 1/8/2021      **In control:** Board of Supervisors  
**On agenda:** 2/3/2021      **Final action:**  
**Title:** Ordinance to Amend County Code Chapter 7, Health and Safety, Article 3, Smoking. To receive public comment on its intent to adopt an ordinance to amend Article 3, Smoking, of Chapter 7, Health and Safety, of the Albemarle County Code by amending sections 7-300 through 7-309 and repealing section 7-304, Designated no-smoking areas in restaurants. The ordinance would remove the regulation of smoking in restaurants from Article 3, which would hereafter be regulated by State law as provided in the Virginia Indoor Clean Air Act (Virginia Code § 15.2-2820 et seq. and, in particular, Virginia Code § 15.2-2825). The ordinance would also establish that a violation of Article 3 is punishable by a fine of up to \$100 and make minor non-substantive amendments.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Att.A - Proposed Ordinance

| Date | Ver. | Action By | Action | Result |
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**AGENDA DATE:** 2/3/2021

**TITLE:**

Ordinance to Amend Article 3, Smoking, Chapter 7, Health and Safety, of the Albemarle County Code

**SUBJECT/PROPOSAL/REQUEST:** Public hearing to consider the adoption of an ordinance to amend County Code Chapter 7, Health and Safety, Article 3, Smoking

**ITEM TYPE:** Regular Action Item

**STAFF CONTACT(S):** Richardson, Walker, Henry, Kamptner

**PRESENTER (S):** Greg Kamptner

**LEGAL REVIEW:** Yes

**REVIEWED BY:** Jeffrey B. Richardson

**BACKGROUND:** The General Assembly considered a number of bills in the 1980s regarding smoking. By 1989, no statewide legislation on the topic had succeeded with one limited exception. At the time, smoking could be regulated by localities. Realizing that further statewide bills would be forthcoming, in 1989 the General Assembly adopted HB 601 (Goode), which imposed a statewide moratorium on local regulation of smoking that became effective on July 1, 1989. On June 7, 1989, the Board of Supervisors adopted the smoking regulations that currently compose Article 3 of Chapter 7 of the County Code. The County was among 16 Virginia localities regulating smoking when the statewide moratorium on local regulation took effect.

The 1990 Virginia Indoor Clean Air Act, HB 1055 (Cranwell) required that government-owned buildings provide reasonable no-smoking areas, established mandatory provisions for any local ordinances, but otherwise preempted local ordinances not adopted before the statewide moratorium was imposed. The Act required that any restaurant with more than 50 seats to designate a no-smoking area sufficient for customer demand as determined by management.

In 2009, the 1990 Virginia Indoor Clean Air Act was repealed and was replaced by a new Virginia Indoor Clean Air Act. The 2009 Act continued to allow local ordinances such as Albemarle County's that were adopted prior to January 1, 1990, to continue in effect, even if they were inconsistent with the 2009 Act. The primary purpose of the 2009 Act was to improve the regulations pertaining to smoking in restaurants. The 2009 Act generally prohibits smoking in restaurants, with some exceptions: (1) if a restaurant constructed a smoking room that was structurally separated and contained a separate smoking area, that portion of the restaurant did not have to be smoke-free; (2) outdoor areas not enclosed by walls, windows, or temporary enclosures. The 2009 Act also partially restricted smoking in a number of places used by the general public, such as elevators, the common areas of public schools, and hospital emergency rooms. Local preemption was maintained.

**STRATEGIC PLAN:** Mission. To enhance the well-being and quality of life for all citizens through the provision of the highest level of public service consistent with the prudent use of public funds.

**DISCUSSION:** Comparing the 2009 Virginia Indoor Clean Air Act and the County's smoking regulations in Article 3 of Chapter 7 of the County Code, it appears that, on balance, the County's smoking regulations remain more restrictive than the regulations in the 2009 Act, with the exception of those pertaining to restaurants. The County's restaurant regulations do not apply to restaurants with fewer than 75 seats, require only a minimum of 20 percent of the seats to be in the non-smoking area, and do not require a structurally separated smoking area.

The sections of the County's smoking regulations have always been severable from one another. The proposed ordinance would delete the regulations pertaining to smoking in restaurants. (County Code §§ 7-301, 7-302, 7-304 (repealed), and 7-306 (renumbered)). This change would allow the more restrictive requirements of the Virginia Indoor Clean Air Act to apply. The proposed ordinance would also update the name of the local health district to the Blue Ridge Health District (County Code § 7-307 (renumbered)). Lastly, the penalty for violating the County's smoking regulations was originally classified as a class 4 misdemeanor, which resulted at the time in a fine of up to \$100. Since, then, changes in State law have increased the fine for class 4 misdemeanor to up to \$250. The proposed ordinance would delete the reference to a "class 4 misdemeanor" but retain the fine of up to \$100 for violating the County's smoking regulations (County Code § 7-308 (renumbered)). This fine still greatly exceeds the \$25 maximum fine for violating any local smoking regulations adopted after January 1, 1990.

**BUDGET IMPACT:** None

**RECOMMENDATION:**

Staff recommends that the Board adopt the attached proposed ordinance (Attachment A).

**ATTACHMENTS:**

A - Proposed Ordinance