

**ACTION ITEM
BOARD OF SUPERVISORS**

DATE: February 6, 2007

TO: Board of Supervisors

FROM: Steve Crosby
County Administrator



ISSUE: Discuss Smoking Ban

RECOMMENDATION: N/A

BUDGET IMPACT: N/A

ATTACHMENTS: (1)

[1] Memo dated 1/30/07 [] Reso/Ord/Proc #

[] [] Reso/Ord/Proc #

[] [] Reso/Ord/Proc #

REVIEW: [] Legal _____
[] _____
[] _____

[] Consent Agenda [] Other Business [] Public Hearing
[X] Discussion Item [] Presentation [X] Unfinished Business
[] New Business


PRESENTATION BY: Bob Gibbons

ELECTION DISTRICT: N/A

Office of the
County Attorney

MEMORANDUM

TO: Board of Supervisors

FROM: Joseph L. Howard, Jr. 
County Attorney

DATE: January 30, 2007

RE: Virginia Indoor Clean Air Act and Local Ordinances regarding Smoking

Currently the Virginia Indoor Clean Air Act (§ 15.2-2800 et seq., Va. Code Ann.) prohibits smoking in certain locations, and requires no smoking areas to be established in certain other areas. This Act also authorized localities to adopt ordinances regulating smoking, but such local ordinances cannot exceed the State standards (See § 15.2-2803-2806, Va. Code Ann.)

Currently, State law prohibits smoking in the following places:

- Elevators
- Interior of any public elementary, intermediate, and secondary school
- Hospital emergency rooms
- Local or district health departments
- Polling rooms
- Indoor service lines and cashier lines
- Public restrooms in any building owned or leased by the Commonwealth or any agency thereof
- Public school buses
- Interior of a child daycare center
- Public restrooms in healthcare facilities

State law also requires the Commonwealth, and any agency thereof, and every locality to provide reasonable no-smoking areas in any building owned or leased by the Commonwealth or any agency thereof or a locality.

Restaurants having a seating capacity of 50 or more persons are required to have a designated no-smoking area under current State law. In addition, the proprietor of an educational facility (except public elementary, intermediate, and secondary school), healthcare facility, or retail

establishment of 15,000 square feet or more, serving the general public (including department stores, grocery stores, drug stores, clothing stores, shoe stores, and recreational facilities), is required to designate a reasonable no-smoking area.

As mentioned earlier in this Memorandum, State law also authorizes localities to adopt ordinances regulating smoking, but such ordinances cannot exceed the standards established in the Virginia Indoor Clean Air Act. Local ordinances are required to prohibit smoking in the following locations:

- Elevators
- Interior of any public elementary, intermediate, and secondary school
- Common areas of an educational facility, including classrooms, hallways, auditoriums and public meeting rooms
- Hospital emergency rooms
- Any part of a restaurant designated a no-smoking area
- Indoor service lines and cashier lines
- School buses and public conveyances

Localities may include in local smoking ordinances that the management shall designate reasonable no-smoking areas in the following places:

- Retail and service establishments of 15,000 square feet or more, serving the general public, such as department stores, grocery stores, drug stores, clothing stores, and shoe stores
- Rooms in which a public meeting or hearing is being held
- Places of entertainment and cultural facilities, such as theaters, concert halls, gymnasiums, auditoriums, art galleries, libraries, and museums
- Indoor facilities used for recreational purposes
- Other public places (defined as an enclosed indoor area used by the public)
- Any restaurant having a seating capacity of 50 or more customers.

Under State law, localities can not regulate smoking in the following places:

- Bars and lounge areas
- Retail tobacco stores
- Restaurants, conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions
- Office or work areas which are not entered by the general public in the normal course of business
- Areas of enclosed shopping centers or malls that are external to the retail stores used by customers as a route of travel from one store to another
- Lobby areas of hotels, motels, and other establishments open to the public for overnight accommodations

Several cities in the Tidewater area and a number of the Northern Virginia jurisdictions have ordinances that are adopted in accordance with the standards set forth previously in this Memorandum under State law.

If the Board desires to enact a smoking ordinance that tracks the State Code provisions outlined previously in this Memorandum, the Board has the legal authority to do so. Based on a comparison of the current locations smoking is prohibited under existing State law, and the places localities are authorized to prohibit smoking, the only areas not covered by State law are:

- Rooms in which a public meeting or hearing are being held
- Places of entertainment and cultural facilities such as theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries and museums
- Indoor facilities used for recreational purposes
- Other public places (defined as an enclosed indoor area used by the public)

There is currently legislation that was introduced in the 2007 General Assembly that would have more stringent standards regarding smoking under the State Code. However, this legislation has not been adopted at this point.