

Joint Commission on Administrative Rules  
July 10, 2007  
1:00 p.m.  
Senate Room A, General Assembly Building

Virginia Department of Health Actions on Smoking in Restaurants

- On April 10, 2007 Governor Kaine vetoed House Bill 2422, which would have removed the requirement for restaurants to maintain nonsmoking sections, provided that they post "smoking permitted" signs. His amendment was not accepted by the House of Delegates, though there is broad agreement that additional smoking limitations are warranted. Accordingly, he asked the State Health Commissioner to convene stakeholders to develop a proposal for next year.
- One concern with the Governor's amendment was that imposing a smoking ban in restaurants as defined in §35.1 of the *Code of Virginia* could result in some impractical applications.
- On May 7, 2007 the Virginia Department of Health hosted a meeting (Attachment A) in Richmond to receive input from all interested parties for the purpose of developing a definition of a "restaurant" that would potentially be used in a smoking law that might be introduced in the next legislative session. The meeting was solely for the purpose of receiving input from interested parties regarding the definition of a restaurant as it relates to a possible smoking ban in restaurants, not whether or not a ban should be implemented.
- The following organizations provided public comment to the workgroup: Virginians for a Healthy Future, American Health Association, Medical Society of Virginia, Virginia Beach Restaurant Association, Virginia Hospitality and Travel Association, and the Virginia Farm Wineries Association. In addition to the State Health Commissioner, the following VDH staff received the public comments: Bob Hicks, Director, Office of Environmental Health Services; Gary Hagy, Director, Division of Food and General Environmental Services, and Joe Hilbert, Executive Advisor to the State Health Commissioner.
- Following the meeting Virginia Department of Health's workgroup reviewed the various definitions of "restaurant" used by other states as part of their statutory smoking prohibitions.
- On June 18, 2007 the Virginia Department of Health hosted a second public meeting in Richmond to receive and discuss comments on a proposed definition and to receive additional proposals. Based on the comments the proposed definition has been revised (Attachment B) and will be discussed at our next meeting in mid-August.

## Attachment A

### Town Hall Notice

The Virginia Department of Health is hosting a meeting on May 7, 2007 at 2 pm in the General Assembly Building, House Room C to receive input from all interested parties for the purpose of developing a definition of a "restaurant" that would potentially be used in a smoking law that might be introduced in the next legislative session. The meeting is solely for the purpose of receiving input from interested parties regarding the definition of a restaurant as it relates to a possible smoking ban in restaurants, not whether or not a ban should be implemented. All parties are welcome and registration is not required.

For your reference, the current definition of a restaurant can be found in Sec. 35.1-1 of the *Code of Virginia*. It is as follows:

"Restaurant" means any one of the following:

a. Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

b. Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

Written comments may be referred to Robert W. Hicks, Director, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, Room 519, Richmond, Virginia, 23219 or you may email him at [Robert.Hicks@vdh.virginia.gov](mailto:Robert.Hicks@vdh.virginia.gov).

## Attachment B

### Definition of a Restaurant Relating to Smoking Bans

#### § 35.1-1. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

1. "Board" or "State Board" means the State Board of Health.
2. "Campground" means and includes but is not limited to a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in this section and in §§ 32.1-203 and 36-71, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing his sanitary facilities within his property lines.
3. "Camping unit" means and includes a tent, tent trailer, travel trailer, camping trailer, pickup camper, motor home, and any other device or vehicular type structure for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.
4. "Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.
5. "Commissioner" means the State Health Commissioner.
6. "Department" means the State Department of Health.
7. "Hotel" means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.
8. "Person" means an individual, corporation, partnership, association, or any other legal entity.
9. "Restaurant Food Establishment" means any one of the following:

a. Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

b. Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

10. "Summer camp" means and includes any building, tent, or vehicle, or group of buildings, tents, or vehicles, if operated as one place or establishment, or any other place or establishment, public or private, together with the land and waters adjacent thereto, which is operated or used in this Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical education, or health of persons under eighteen years of age who are not related to the operator of such place or establishment by blood or marriage within the third degree of consanguinity or affinity, if twelve or more such persons at any one time are accommodated, gratuitously or for compensation, overnight and during any portion of more than two consecutive days.

§ 15.2-2800. Definitions.

As used in this chapter unless the context requires a different meaning:

"Bar or lounge area" means any establishment or portion of an establishment where one can consume alcoholic beverages and hors d'oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.

"Educational facility" means any building used for instruction of enrolled students, including, but not limited to, any day-care center, nursery school, public or private school, college, university, medical school, law school, or career and technical education school.

"Health care facility" means any institution, place, building, or agency required to be licensed under Virginia law, including, but not limited to, any hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory medical and surgical center.

"Private work place" means any office or work area that is not open to the public in the normal course of business except by individual invitation.

"Proprietor" means the owner or lessee of the public place, who ultimately controls the activities within the public place. The term "proprietor" includes corporations, associations, or partnerships as well as individuals.

"Public conveyance" or "public vehicle" means any air, land, or water vehicle used for the mass transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus, or boat that is not subject to federal smoking regulations.

"Public place" means any enclosed, indoor area used by the general public, including, but not limited to, any building owned or leased by the Commonwealth or any agency thereof or any locality, public conveyance or public vehicle, restaurant, educational facility, hospital, nursing facility or nursing home, other health care facility, library, retail store of 15,000 square feet or more, auditorium, arena, theater, museum, concert hall, or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.

"Recreational facility" means any enclosed, indoor area used by the general public and used as a stadium, arena, skating rink, video game facility, or senior citizen recreational facility.

"Restaurant" means any ~~building, structure, or area~~ food establishment, as defined under § 35.1-1, located in the interior of any building or structure, excluding a bar or lounge area as defined in this chapter, having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment including only

the area where food is prepared, served, and consumed. Excluded from this definition are exterior dining areas of food establishments. For the purpose of this section, exterior dining areas of food establishments enclosed by screened walls, roll-up doors, and other seasonal or temporary enclosures are considered restaurants regardless of whether the roll-up doors or other seasonal or temporary enclosures are open or closed.

"Smoke" or "smoking" means the carrying or holding of any lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.

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