

Memorandum of Agreement Between
The Virginia Department of Health The
Virginia Department of Housing and Community Development and
The Virginia Department of Agriculture Consumer Services
October 2009

Statutory Authority

This agreement is established with reference to the Virginia Indoor Clean Air Act (Title 15.2 §2820-2833), Virginia Food Regulations (12 VAC 5-421), Virginia Retail Food Establishment Regulations (2 VAC 5-585) and the Virginia Uniform Statewide Building Code (USBC), (13 VAC 5-63) regarding the policies and procedures pursuant to these Acts and regulations.

Purpose

With the Governor's signing of House Bill 1703, smoking in restaurants will be prohibited effective December 1, 2009, with limited exceptions. One of these exceptions includes the construction of an area inside a restaurant where smoking may occur provided it is:

"...(i) structurally separated from the portion of the restaurant in which smoking is prohibited and to which ingress and egress is through a door and (ii) is separately vented to prevent the recirculation of air from such area to the area of the restaurant where smoking is prohibited. At least one public entrance to the restaurant shall be into an area of the restaurant where smoking is prohibited."

Statutory authority has been granted to the Virginia Department of Health to inspect for compliance with this section. The Virginia Department of Health (VDH), the Virginia Department of Housing and Community Development (VDHCD), and the Virginia Department of Agriculture Consumer Services (VDACS) have regulatory authority to review the construction and renovation of restaurants. Additionally, VDACS and VDH share responsibility for inspecting certain types of restaurants. To eliminate as much overlap, conflict, or duplication as possible, an agreement between VDH, VDHCD, and VDACS is established by this Memorandum of Agreement.

In order to assure this agreement can be implemented, VDH, VDHCD, and VDACS recognize that there are major areas of regulatory responsibility with respect to the review of construction and renovation in restaurants. These are identified in Part I of this agreement and relate to the responsibilities that VDH, VDHCD, and VDACS each have with respect to this new law. Additionally, both VDH and VDACS share responsibility for inspecting restaurants in Virginia. Gas stations and convenience stores with fifteen or fewer seats are inspected by

VDACS whereas all other restaurants are inspected by VDH. Responsibility for compliance with this law at all restaurants across the state is described in Part II of this agreement. The following agreement outlines the responsibilities assigned to each agency in accordance with these areas.

I. Restaurant Construction and Renovation

a. Permits and Plan Review Services – Local Building Official

When a permit applicant for a new restaurant submits plans, which include a separate area for smoking; or plans for the renovation of an existing restaurant that include a separate area for smoking, to the local building official for review and approval, the building official will evaluate the restaurant design for:

- i. Compliance with the USBC-Virginia Construction Code for separately vented requirements applicable to smoking areas; for separation of the smoking area from the non-smoking area with a structural component of materials constructed from the floor to the ceiling; for means of egress, accessibility and occupant load; and, all other applicable USBC requirements to prevent recirculation of air and the migration of smoke. The ingress/egress door to the smoking area is required to be capable of remaining in the closed position and is not required to be self-closing.
- ii. Upon completion of the review, the building official will issue an approved building permit to the permit applicant that verifies the area designated a smoking area is in compliance with all applicable provisions of the USBC.

b. Permits and Plan Review Services – Local Health Department

When a permit applicant for a new restaurant submits plans, which include a separate area for smoking; or plans for the renovation of an existing restaurant that include a separate area for smoking, to the Local Health Department (LHD) as required by 12 VAC 5-421-3600, the LHD, upon receipt of written verification from the local building official that the area designated as a smoking area is in compliance with the USBC, will evaluate the restaurant plans for:

- i. Ingress and egress into the area through a door that remains closed when not being actively used for ingress or egress.

- ii. At least one public entrance to the restaurant in the area of the restaurant where smoking is prohibited.
- iii. Posted signs stating "No Smoking" or signs containing the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it clearly and conspicuously in the restaurant where smoking is prohibited.

c. Plan Review Services—VDACS

When a new restaurant gas station or convenience store with fifteen or fewer seats submits plans, which include a separate area for smoking: or plans for the renovation of an existing restaurant gas station or convenience store with fifteen or fewer seats that include a separate area for smoking, to VDACS as required by 2 VAC 5-585-3600, VDACS, upon receipt of written verification from the local building official that the area designated as a smoking area is in compliance with the USBC, will evaluate the restaurant gas station or convenience store plans with fifteen or fewer seats for:

- i. Ingress and egress into the area through a door that remains closed when not being actively used for ingress or egress.
- ii. At least one public entrance to the restaurant in the area of the restaurant where smoking is prohibited.
- iii. Posted signs stating "No Smoking" or signs containing the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it clearly and conspicuously in the restaurant where smoking is prohibited.

II. Restaurant Inspections

Whereas VDACS has regulatory authority to inspect restaurant gas stations and convenience stores with fifteen or fewer seats and VDH has regulatory authority to inspect all other restaurants in Virginia, both agencies will inspect for compliance with this law as follows:

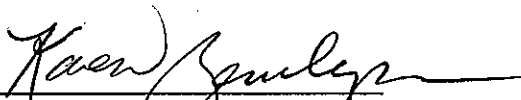
- i. Verify that the proprietor posts signs stating "No Smoking" or containing the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it, clearly and conspicuously in every restaurant where smoking is prohibited
- ii. Verify that the proprietor has removed all ashtrays and other smoking paraphernalia from any area in the restaurant smoking is prohibited

If alleged non-compliance is observed during restaurant inspections conducted by VDACS at gas stations or convenience stores with fifteen or fewer seats, VDACS will notify the local health department of their observations after informing the proprietor of the standards listed above.

III. Agreement and Consent

This agreement shall be effective upon the signature of the State Commissioner of Health, the Director of Housing and Community Development, and the State Commissioner of Agriculture, and shall remain in effect until modified or terminated by mutual agreement of the agency heads. Any agency may terminate their participation in this agreement by notifying the other of their intent thirty-days prior to such termination.

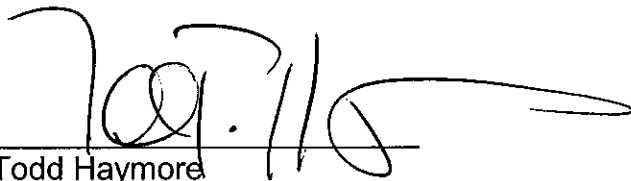
This memorandum of agreement is for the purpose of facilitating cooperation between three agencies of the Commonwealth. It does not intend to create, nor does it create any rights in any fourth party.



Karen Remley, MD, MBA, BAAP
Commissioner
Virginia Department of Health



Bill Shelton
Director
Virginia Department of Housing
And Community Development



Todd Haymore
Commissioner
Virginia Department of Agriculture