



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 17, 2010

R&R BOH10-03

Proposed No. BOH10-03.1

Sponsors

1 A RULE AND REGULATION relating to smoking in public
2 places, establishing reinspection fees and amending civil
3 penalties for places regulated under the Board of Health
4 Smoking in Public Places Regulations; amending R&R 07-
5 03, Section 7, and BOH 19.03.040, R&R 07-03, Section 9,
6 and BOH 19.03.060 and R&R 07-03, Section 11, and BOH
7 19.03.080 and adding a new section to BOH chapter 2.06;
8 enacted pursuant to RCW 70.05.060 and 70.160.080,
9 including the latest amendments or revisions thereto.

10 BE IT ADOPTED BY THE KING COUNTY BOARD OF HEALTH:

11 SECTION 1. R&R 07-03, Section 7, and BOH 19.03.040 are each hereby
12 amended to read as follows:

13 **Definitions.** As used in this chapter, the following terms have the meanings
14 indicated unless the context clearly indicates otherwise.

15 A. (~~"Smoke" or "smoking" means the carrying or smoking of any kind of lighted~~
16 ~~pipe, cigar, cigarette, or any other lighted smoking equipment.~~

17 B.)) "Director" means the director of the Seattle-King County department of
18 public health or the director's authorized representative.

19 B. "Employee" means any individual who is employed by an employer in return
20 for the payment of direct or indirect monetary wages or profit, any individual who
21 volunteers his or her services to an employer for no monetary compensation or any
22 individual who performs work or renders services, for any period of time, at the direction
23 of an owner, lessee or other person in charge of a place that is subject to the provisions of
24 this chapter.

25 C. "Employer" means any person, sole proprietorship, partnership, corporation,
26 association, nonprofit organization or other entity that employs or retains the services of
27 one or more employees.

28 D. "Large event venue" means any public place or place of employment in which
29 more than one thousand persons are lawfully permitted to assemble.

30 E. "Open to the public" means explicitly or implicitly authorizing or inviting
31 entry or use by the public. Factors relevant to the determination of whether a portion of a
32 building other than a private residence is "open to the public" include, but are not limited
33 to:

34 1. Whether the owner, lessee or person in charge of a portion of a building
35 permits or invites entry to the portion of the building by individuals other than employees
36 who perform work or persons who meet selective, restrictive and limited criteria for
37 entry;

38 2. Whether the owner, lessee or person in charge of a portion of a building
39 directs, authorizes or otherwise engages in advertising or promotion to the public to
40 encourage occupancy or use of the portion of the building;

41 3. Whether the portion of the building, or any area adjacent thereto, features
42 signage indicating that the portion of the building is open; or

43 4. Whether the owner, lessee or person in charge of a portion of a building also
44 owns, operates or leases a retail business for the sale of tobacco products that is open to
45 the public in an area adjacent to the portion of the building and the portion of the building
46 is open to the customers of the retail business.

47 F. "Place of employment" means any area under the control of a public or private
48 employer which employees are required to pass through during the course of
49 employment, including, but not limited to, entrances and exits to the places of
50 employment, and including a presumptively reasonable minimum distance of twenty-five
51 feet from entrances, exits, windows that open and ventilation intakes that serve an
52 enclosed area where smoking is prohibited, work areas, restrooms, conference and
53 classrooms, break rooms and cafeterias and other common areas. A private residence or
54 home-based business, unless used to provide licensed child care, foster care, adult care or
55 other similar social service care on the premises, is not a "place of employment."

56 G. "Public place" means that portion of any building or vehicle used by and open
57 to the public, regardless of whether the building or vehicle is owned in whole or in part
58 by private persons or entities, the state of Washington, or other public entity, and
59 regardless of whether a fee is charged for admission, and includes a presumptively
60 reasonable minimum distance, as set forth in RCW 70.160.020, of twenty-five feet from
61 entrances, exits, windows that open and ventilation intakes that serve an enclosed area
62 where smoking is prohibited. A public place does not include a private residence unless

63 the private residence is used to provide licensed child care, foster care, adult care or other
64 similar social service care on the premises.

65 "Public place" includes, but is not limited to, schools, elevators, public
66 conveyances or transportation facilities, museums, concert halls, theaters, auditoriums,
67 exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or
68 clinics, enclosed shopping centers, retail stores, retail service establishments, financial
69 institutions, educational facilities, ticket areas, public hearing facilities, state legislative
70 chambers and immediately adjacent hallways, public restrooms, libraries, restaurants,
71 waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception
72 areas and no less than seventy five percent of the sleeping quarters within a hotel or motel
73 that are rented to guests. "Public place" does not include a private residence. This chapter
74 is not intended to restrict smoking in private facilities that are occasionally open to the
75 public except upon the occasions when the facility is open to the public.

76 ~~((C. "Place of employment" means any area under the control of a public or
77 private employer which employees are required to pass through during the course of
78 employment, including, but not limited to, entrances and exits to the places of
79 employment, and including a presumptively reasonable minimum distance of twenty five
80 feet from entrances, exits, windows that open and ventilation intakes that serve an
81 enclosed area where smoking is prohibited, work areas, restrooms, conference and
82 classrooms, break rooms and cafeterias and other common areas. A private residence or
83 home based business, unless used to provide licensed child care, foster care, adult care,
84 or other similar social service care on the premises, is not a "place of employment."))~~

85 H. "Smoke" or "smoking" means the carrying or smoking of any kind of lighted
86 pipe, cigar, cigarette, or any other lighted smoking equipment.

87 SECTION 2. R&R 07-03, Section 9, and BOH 19.03.060 are each hereby
88 amended to read as follows:

89 **Application to modify presumptively reasonable minimum distance.** Owners,
90 operators, managers, employers or other persons who own or control a public place or
91 place of employment may seek to rebut the presumption that twenty-five feet is a
92 reasonable minimum distance by making application to the director (~~of the Seattle King~~
93 ~~County Department of Public Health~~). The presumption will be rebutted if the applicant
94 can show by clear and convincing evidence that, given the unique circumstances
95 presented by the location of entrances, exits, windows that open, ventilation intakes or
96 other factors, smoke will not infiltrate or reach the entrances, exits, open windows or
97 ventilation intakes or enter into the public place or place of employment and, therefore,
98 the public health and safety will be adequately protected by a lesser distance.

99 SECTION 3. R&R 07-03, Section 11, and BOH 19.03.080 are each hereby
100 amended to read as follows:

101 **Enforcement - smoking in public places regulations.**

102 A. The director (~~of the Seattle King County Department of Public Health or his~~
103 ~~or her authorized representative~~) is authorized to enforce the restrictions and
104 requirements of this chapter in accordance with the provisions of BOHC chapter 1.08,
105 consistent with the provisions of subsections B. and C. of this section.

106 B. When violations of this chapter occur, a warning shall first be given to the
107 owner or other person in charge. Any subsequent violation is subject to a civil penalty of

108 up to one hundred dollars, except as provided in subsection C. of this section. Each day
109 upon which a violation occurs or is permitted to continue constitutes a separate violation.

110 C. Civil penalties for violations of this chapter at any large event venue shall be
111 assessed at a rate of one hundred dollars for every one thousand persons lawfully
112 permitted to assemble at the venue, for each violation. Each day upon which a violation
113 occurs or is permitted to continue constitutes a separate violation.

114 NEW SECTION. SECTION 4. There is hereby added to BOH chapter 2.06 a
115 new section to read as follows:

116 **Reinspection fees.**

117 A. The director is authorized to charge a reinspection fee for any reinspection of
118 a place regulated under BOH chapter 19.03 when the reinspection is scheduled following
119 a routine inspection or compliance inspection that resulted in the finding of a violation of
120 BOH chapter 19.03 and the reinspection results in the finding of a violation of BOH
121 chapter 19.03.

122 B. The owner, lessee or other person in charge of a public place or place of
123 employment regulated under BOH chapter 19.03 shall pay the following reinspection
124 fees, as applicable:

125 1. Fee for a reinspection resulting in a finding of a second
126 separate violation within any five-year period: \$170.00

127 2. Fee for a reinspection resulting in a finding of a third
128 separate violation within any five-year period: \$240.00

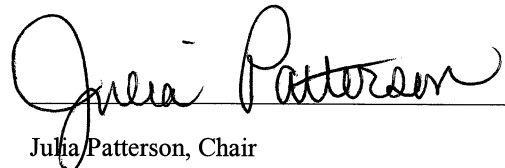
129 3. Fee for a reinspection resulting in a finding of a fourth
130 or subsequent separate violation within any five-year period: \$390.00

131 **SECTION 5. Severability.** If any provision of this rule or its application to any
132 person or circumstance is held invalid, the remainder of the rule or the application of the
133 provision to other persons or circumstances is not affected.
134

R&R BOH10-03 was introduced on and passed by the Board of Health on 9/16/2010,
by the following vote:

Yes: 12 - Ms. Drago, Mr. Hutchinson, Mr. Conlin, Ms. Patterson, Ms.
Lambert, Mr. Licata, Dr. Nicola, Dr. Danielson and Mr. O' Brien
No: 0
Excused: 2 - Ms. Frisinger and Ms. Clark

BOARD OF HEALTH
KING COUNTY, WASHINGTON



Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Board

Attachments: None