

**Illinois Department of Public Health**  
**Smoke Free Illinois Code (77 Ill. Adm. Code 949)**  
**Effective August 14, 2015**  
**Frequently Asked Questions**

**1. What changes were made to the Smoke-Free Illinois Act (410 ILCS 82/)?**

Contrary to various media reports, the Smoke-Free Illinois Act (Act) was NOT amended or changed. You may access the Act here: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2893&ChapterID=35>.

After numerous requests by Smoke-Free Illinois local enforcement officials and advocates, the Department proposed and adopted administrative rules, called the Smoke Free Illinois Code (77 Ill. Adm. Code 949), which clarify definitions and complaint and enforcement procedures in the Act. The Notice of Adopted Rules can be viewed at the following link, pages 149-157:

[http://www.cyberdriveillinois.com/departments/index/register/register\\_volume39\\_issue35.pdf](http://www.cyberdriveillinois.com/departments/index/register/register_volume39_issue35.pdf).

Administrative rules function to interpret or implement a law; rules do not expand or limit a law's scope. In this case, the Act itself neither changed nor gave rise to a new law. Moreover, the Department's rule does not create new restrictions.

The rulemaking process is lengthy and includes a First Notice, during which rules are proposed and made available for public comment. Once public comments are received the Department of Public Health has an opportunity to respond, draft rules with any revisions and the responses to comments are submitted for Second Notice review by the Joint Committee on Administrative Rules. The language in a rule can and often does change from First to Second Notice, so the final version of a rule may differ from the language used during First Notice.

**2. What does the Smoke Free Illinois Code clarify?**

To review the Smoke Free Illinois Code, please visit the following link:

<http://www.ilga.gov/commission/jcar/admincode/077/077009490000100R.html>

(Note: The italicized text is language from the statute, and the normal font is clarifying rule language.)

In order to understand the clarifications provided by the Smoke Free Illinois Code, it is important to refer to the Smoke-Free Illinois Act. It is best to look at these documents side-by-side to determine the relationship between statutory language (Act) and rule language (Code). The rule covers four sections: Definitions, Referenced Materials, Complaints, Enforcement.

Section 949.10 (Definitions) of the Code clarifies and defines terms from Section 10 (Definitions) in the Act.

Section 949.20 of the Code includes state and federal laws, as well as other administrative rules, referenced in this part.

Section 949.30 of the Code refers to Section 40 (b) (Enforcement; complaints) of the Act. The Code further clarifies the procedures for public complaints and the follow-up process for enforcement agencies.

Section 949.40 of the Code refers to Section 40 (Enforcement; complaints) in the Act. The Code further clarifies enforcement procedures of the Act.

**3. Why are these rules getting media attention if nothing has changed?**

Several media reports have incorrectly interpreted this rule as a change to the law. The confusion centers on the definition of "enclosed area." The statutory definition of "enclosed area" is as follows, as found in 410 ILCS 82/10:

“all space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.”

The Smoke Free Illinois Code (77 Ill. Adm. Code 949) includes the statutory definition of “enclosed area” from Section 10 of the Act, with clarifying language to further define a “wall” as follows:

*“Enclosed area” or “indoors” means all space between a floor and a ceiling that is enclosed or partially enclosed with:*

*solid walls or windows, exclusive of doorways; or*

*solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors. (Section 10 of the Act)*

A wall includes any retractable divider, removable wrapping or other physical barrier added to a wall, regardless of size, whether temporary or permanent, and whether the wall contains windows or other openings of any kind, size or number.

In the adopted rules, the definition of “enclosed area” describes what constitutes a “wall” to provide clarification on various types of restaurant and bar areas which use overhead garage doors or removable or retractable walls or wrappings to create self-proclaimed “beer gardens” in which smoking should actually be prohibited under the Act itself.

Various public reports have implied that this rule bans smoking in traditional outdoor beer gardens. This is inaccurate. Only an enclosed area with a ceiling and walls – including retractable walls – is covered under the Act, with smoking prohibited. This is not a departure from the Act but merely a clarification of the legislature’s intent when it defined “enclosed area.” Again, the adopted rule neither addresses (nor bans) traditional, outdoor beer gardens. It is important to note that the Smoke Free Illinois Act (Section 15) prohibits smoking in “places of employment” and provides local enforcement agencies the authority to enforce these provisions through the issuance of citations and fines.

**4. I thought there were restrictions about employees in beer gardens and language about self-service areas. How does that fit? How does the adopted rule differ from the proposed rule?**

During the First Notice period, the rule included language prohibiting smoking in areas of restaurants and bars (including outdoor areas) where food, beverages, or both are served by employees; however, this section of the proposed rule was deleted by the Department prior to the Second Notice period. The final adopted rule does not address self-service areas.

**5. How should local enforcement officials interpret and enforce the Smoke Free Illinois Code?**

The interpretation of the statute has not changed; rather, this clarification is intended to assist business owners and enforcement agencies regarding compliance with the Smoke-Free Illinois Act in their communities. Additional guidance should be sought from legal counsel representing the enforcement agency. This typically equates to a community’s State’s Attorney’s Office or a county’s local health department.

**Additional inquiries should be submitted to the Tobacco Control Program at [DPH.tobaccocontrol@illinois.gov](mailto:DPH.tobaccocontrol@illinois.gov)**