



VARIANCE APPLICATION PROCEDURE

for RCW 70.160, Sec. 6

Presumptively Reasonable Minimum Distance

The following procedural guidelines and process information are provided for variance requests for Chapter 70.160 RCW, Section 6.

- 1) An application for variance from the Clean Indoor Air Act 70.160 RCW, Section 6, must be submitted in writing to the Spokane Regional Health District. The following items must be submitted by the applicant:
 - a) A completed **Variance Application for RCW 70.160, Sec. 6**
 - b) An **application review fee of \$70**
 - i) Applications will not be processed until the payment is received.
 - ii) Preferred method of payment is check.
 - (1) Please make check out to: Spokane Regional Health District.
 - (2) For any questions regarding payment, please call (509) 324-1504.
 - c) **Please return the Variance Application form and review fee of \$70 to: Tobacco Prevention and Control Program, Spokane Regional Health District, 1101 W. College Ave., Spokane, WA 99201.**

- 2) The following items must be submitted directly by a licensed architect or engineer (it is recommended that the same licensed architect or engineer submits both a and b):
 - a) **Completed Certification Report**
 - i) Certification Report form must contain the license number, signature, and official stamp from the licensed architect or engineer.
 - ii) Only the Certification Report form provided by the Spokane Regional Health District will be accepted.
 - b) **Detailed Plans** of the facility indicating the areas for which you are requesting the Variance
 - i) The Detailed Plans must include at least one plan (overhead) view of the facility
 - (1) The plan view must show the location of all doors, windows that open, and ventilation intakes that are nearby the area for which a variance is being requested.
 - ii) The Detailed Plans must include at least one profile or side view of the facility
 - (1) The profile or side view must show the location of all doors, windows that open, and ventilation intakes that are nearby the area for which a variance is being requested.
 - (2) If the facility for which the variance is being requested is in a multi-story building, the profile or side view must show any doors, windows that open, and ventilation intakes on other stories that are nearby the area for which a variance is being requested.
 - iii) The Detailed Plans must show any area or situation that is mentioned in Section B of the Variance Application.
 - iv) The Detailed Plans must show where the establishment or facility is located in the city or town.
 - v) The Detailed Plans must show all surrounding buildings that may be impacted by the lesser presumptively reasonable minimum distance.
 - vi) If the establishment that is requesting a variance is within a larger facility, the Detailed Plans must show any doors, windows that open, and ventilation intakes of the entire facility that are nearby the area for which a variance is being requested.
 - vii) The Detailed Plans must use an accurate and correct scale.
 - viii) The Detailed Plans must be stamped by the licensed architect or engineer.
 - ix) The Detailed Plans may contain any other plans, views, etc. that will support the application for variance.
 - c) **The licensed architect or engineer should submit the Certification Report and Detailed Plans directly to: Tobacco Prevention and Control Program, Spokane Regional Health District, 1101 W. College Ave., Rm. 200, Spokane, WA 99201.**

- 3) The Health District shall recognize the receipt of the above information within 14 days.
- 4) Upon receipt of the complete variance application and review fee, the designated Health District staff will review the request, consulting other local, state, and/or national expertise as necessary.
- 5) When submitting a variance application, it is important to provide sufficient detail in Sections (A) and (B) of the Variance Application to allow the Health District to make an informed decision. The burden of proof for distances of less than twenty-five feet falls upon the applicant, and the variance application must be accompanied by documentation that clearly and convincingly demonstrates that smoke will not infiltrate into the facility and therefore public health will be adequately protected by a lesser distance. This documentation includes the Certification Report and Detailed Map. Failure to provide this evidence may necessitate a resubmittal.
- 6) A recommendation regarding the variance will be submitted to the Health Officer or authorized designee of the Spokane Regional Health District for review and concurrence.
- 7) The private counsel will be contacted for legal opinions as necessary.
- 8) The Health Officer or authorized designee will grant the variance if appropriate.
- 9) A written copy of the variance decision will be sent to the person requesting the variance within 90 days of receipt of the completed variance application package. If data submitted are insufficient or if the Health Officer or authorized designee of the Spokane Regional Health District does not concur in writing, a time delay may occur.
- 10) Variances, if granted, will only apply to the areas indicated in the application, and to the operating conditions that were tested and/or inspected by the licensed architect or engineer. Any changes made after a variance is granted may result in the variance being rescinded.
- 11) Conditions may be placed on any variance approved. These conditions may include, but may not be limited to: no structural changes, periodic review, and review in response to complaint of smoke entering the facility. Variances may be rescinded if it becomes apparent that smoke is entering the facility from the approved lesser distance, if any structural changes are made to the area for which a variance has been granted, or if the owner is allowing smoking at a distance other than that approved in the variance.
- 12) Failure to comply with a variance decision may result in appropriate legal action by the Health District, which may include injunctive and/or civil penalty actions.
- 13) Any variances that are granted for RCW 70.160, Section 6, are non-transferable. Change of ownership will necessitate resubmittal.

REVIEW CRITERIA

The following criteria will be considered in the determination of approval/disapproval of a variance request:

1. Does the information submitted provide clear and convincing evidence that smoke will not infiltrate or reach the doors, windows that open, or ventilation intakes that serve a public place or place of employment?
2. What is the quality/quantity of data submitted to justify the request?
3. Is there any data/research that refutes the submitted information? Is there any indication that a public health or safety problem could result?
4. Will the variance protect the public's health and safety?
5. Will the variance eliminate an existing public health hazard, or create new hazards?
6. Additional information may be required to clarify any questions or concerns with the application.