

**Nebraska Department of Health and Human Services  
Outdoor Area Compliance Guidance Document**

Revised 04/2009

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**Purpose:** The intent of this document is to provide proprietors with guidance on complying with the Nebraska Clean Indoor Air Act (NCIAA) requirements for an *outdoor* smoking area.

**Requirements:** Neb. Rev. Stat. §71-5723 defines an indoor area as an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

Therefore, to be considered an outdoor area and thus allow smoking, an area must meet at least one of the following criteria:

1. Not have walls on all sides (see Title 178 NAC Chapter 7 regulations for the definition of a wall)
2. Have no ceiling at all (see Title 178 NAC Chapter 7 regulations for the definition of a ceiling)
3. Have at least 20% permanently open wall space relative to the total square footage of the walls (see below).

**Note:** Any material obstructing the open space (including, but not limited to screens, signs, shades, blinds, bars or fencing) must be subtracted from the total open space.

**MEASUREMENT GUIDANCE**

Measure the height (up to the first 8 feet) and the length of each wall. Multiply length by height of each wall to get Total Wall Square Footage (TWSF)

$$\text{TWSF} = \underline{\hspace{2cm}}$$

Multiply the TWSF by 20% to get Necessary Permanent Open Space (NPOS)

$$\text{NPOS} = \underline{\hspace{2cm}}$$

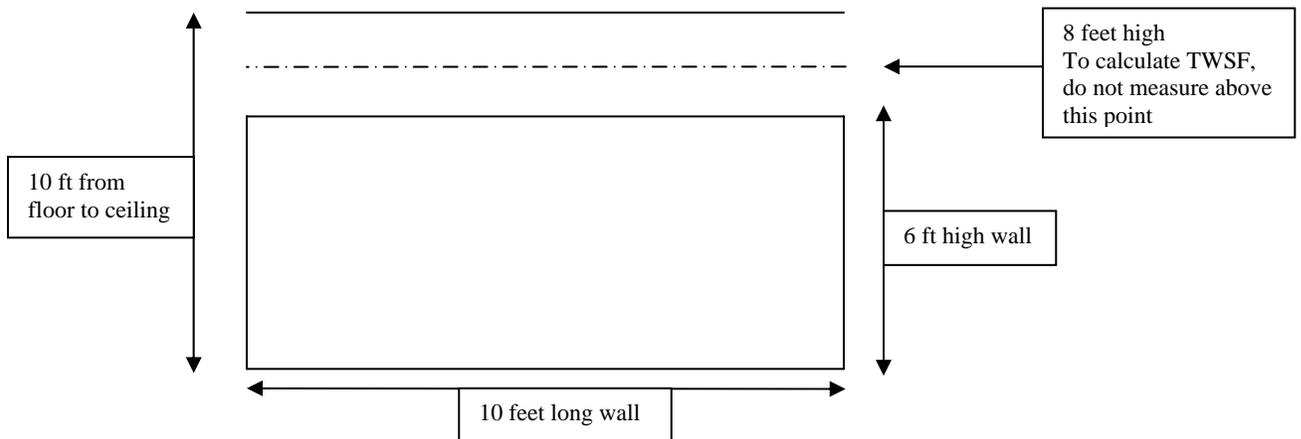
Measure the height and length of all permanently open areas. Multiply length by width to get amount Permanent Open Space Present (POSP). Subtract square footage of any materials obstructing open space.

$$\text{POSP} = \underline{\hspace{2cm}}$$

POSP should be greater than or equal to NPOS

**Example #1**

For this example, the outdoor area is attached to the proprietor's main building, and therefore one wall is entirely enclosed. The other three walls are made up of a 6 foot privacy fence, each being 10 feet long and there is a ceiling at 10 feet high. The open space considered for compliance is located between the 6 foot tall fence and the 10 foot tall ceiling.



**Calculating Total Wall Square Footage (TWSF)**

Enclosed wall: 8 ft X 10 ft. = 80 sq. ft.  
Non-adjacent walls: 6 ft X 10 ft. = 60 sq. ft.      60 sq. ft. X 3 walls = 180 sq. ft.

**TWSF = 260 sq. ft.**

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Calculating Necessary Permanent Open Space (NPOS)

**NPOS = 260 X 0.20 = 52 sq. ft.**

Measuring Permanent Open Space Present (POSP)

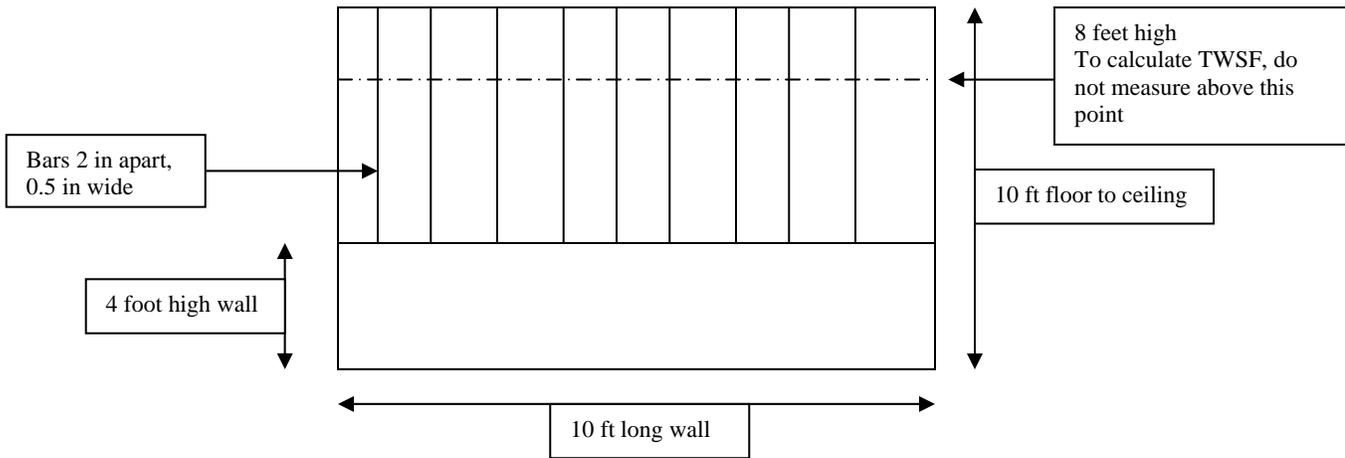
Each non-adjacent wall: 4 ft. X 10 ft = 40 sq. ft. 40 sq. ft. X 3 walls = 120 sq. ft.

**POSP = 120 sq. ft**

Conclusion: This outdoor smoking area contains 120 square feet of open space, which is greater than the required 52 sq. ft. Therefore, this outdoor smoking area is in compliance.

**Example #2**

This smoking area has three walls that each is 10 ft across and has no open space. There is a ceiling at 10 ft high. The fourth wall has some permanent open space to the outside. The open (fourth) wall consists of a 4 foot high and 10 foot long partial wall topped with security bars that are 2 inches apart, 0.5 in wide, and 6 ft high to the ceiling (see example below).



Calculating Total Wall Square Footage (TWSF)

Enclosed walls: 8 ft. X 10 ft. = 80 sq. ft. 80 sq. ft. X 3 walls = 240 sq. ft.  
 Partial wall: 4 ft. X 10 ft. = 40 sq. ft.

**TWSF = 280 sq. ft.**

Calculating Necessary Permanent Open Space (NPOS)

**NPOS = 280 X 0.20 = 56 sq. ft.**

Measuring Permanent Open Space Present (POSP)

Partial wall: 6 ft. X 10 ft = 60 sq. ft.

Security bars 0.5 in wide = 0.042 feet wide and 2 in apart = 6 bars per foot = 60 bars each wall  
 0.042 ft. wide X 4 ft. high X 60 bars = 10.08 sq. ft. each wall

60 sq. ft. – 10.08 sq. ft. (security bars) = 49.92 sq. ft.

**POSP = 49.92 sq. ft**

Conclusion: This outdoor smoking area contains only 50 square feet of open space, which is less than the required 56 sq. ft. Therefore, this outdoor smoking area is **NOT** in compliance.