

A Regulation Eliminating Smoking in Public Places and Places of Employment

Sec. 1000. Title

This regulation shall be known as the _____ County **Clean Indoor Air Regulation** of ____.

Sec. 1001. Findings and Purpose

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is (a) a cause of numerous diseases in otherwise healthy nonsmokers' and (b) a major contributor to indoor air pollution; and (c) that children, elderly people, hospitality workers and individuals with cardiovascular and/or respiratory diseases are at special risk.

The Environmental Protection Agency (EPA) has classified tobacco smoke as a Group A Carcinogen, known to cause cancer in humans. Accordingly, the _____ County Board of Health finds and declares that the purpose of this Regulation is to (1) protect the public health and welfare by prohibiting smoking in public places and by regulating smoking in enclosed places of employment and (2) recognize that where the need to breathe smoke-free air conflicts with the desire to smoke, the need to breathe smoke-free air shall have priority.

In attempting to minimize the effects of tobacco smoke on the general public in public places, the regulations of [boards of health] address a serious health issue which the Legislature has recognized. Local Boards of Health are authorized by WV Code §16-2-11(a)(1)(ii) specifically to maintain "clean and safe air", and in WV Code §16-2-11(b)(3) they are generally empowered to adopt and amend county rules (i.e. regulation) to protect the health of their citizens.

Based upon the foregoing observations, we find that clean indoor air regulations of local boards of health that place restrictions on smoking in enclosed public places (1) are consistent with the findings of the Legislature "that smoking may cause lung cancer, heart disease, emphysema and other serious health problems," (2) advance the legislatively prescribed public policy "to provide the state with a citizenry free from the use of tobacco," and (3) fall within the bounds of authority granted by the Legislature to such boards....." Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.

Sec. 1002. Definitions

For purposes of this regulation:

- A. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional

corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

- B. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- C. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- D. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- E. "Healthcare Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitations hospitals, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialist within these professions. "Healthcare Facility" includes all waiting rooms, hallways, private rooms and semiprivate rooms.
- F. "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, private offices, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.
- G. "Public Place" means any area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, bars, gaming facilities, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, and waiting rooms and outdoor service lines and public parks. This shall include all rooms and offices of any agency that receives any monetary support from _____ County.
- H. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other establishment which gives or offers for sale food or beverage to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

- I. "Service Line" means any line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- J. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.
- K. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places, where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 1003. Application of Regulation to County/City Owned Facilities.

All facilities including buildings, vehicles owned or operated by the City or County or any agency that receives any monetary support from _____ County shall be subject to the provisions of this regulation.

Sec. 1004. Prohibition of Smoking in Public Places

- A. Smoking shall be prohibited in all enclosed public places within _____ County, including, but not limited to, the following places:
 - 1. Aquariums, galleries, libraries and museums.
 - 2. Child care and adult day care facilities.
 - 3. Buses, taxicabs, airports and other means of public transit under the authority of _____ County, and ticket, boarding, and waiting areas of public transit depots.
 - 4. Service lines.
 - 5. All areas of enclosed public places available to and customarily used by the public in all businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
 - 6. Restaurants, bars and gaming establishments.
 - 7. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
 - 8. Sports arenas and convention halls, including bowling facilities.
 - 9. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any agency, board, council, commission, committee, including joint committees, or agencies of _____ County or any political subdivision of the State, to the extent such place is subject to the jurisdiction of the County. This shall include any agency that receives any monetary support from _____ County.

10. Waiting rooms, hallways, wards, private and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, nursing homes, and any other health care providers.
 11. Lobbies, hallways, and other common areas in apartment buildings, hotels, motels, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities.
 12. Polling places.
 13. Auction houses.
 14. Enclosed shopping malls including indoor flea markets.
 15. All fire department facilities.
 16. All emergency medical services facilities.
- B. Designated Outdoor Smoking Areas: To ensure the public access into public venues free from tobacco smoke exposure and to prevent tobacco smoke from entering protected areas, outdoor designated smoking areas shall occur at a distance of 15 feet or more outside any entrance, exit, or ventilation units of any buildings or area where smoking is prohibited. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.
- C. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment facility or property as a nonsmoking.
- D. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

Sec. 1005. Prohibition of Smoking in Places of Employment

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- B. Each employer having an enclosed place of employment located within _____ County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- C. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 1006. Where Smoking Not Regulated

Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from Section 1005:

- A. Private residences, except when used as a childcare, adult daycare, health care facility, or homes that are registered with West Virginia Department of Health as personal or residential board facility.
- B. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this regulation.
- C. Bingo operations that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-28A, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.

Sec. 1007. Posting of Signs

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building or other area where smoking is prohibited by this regulation by the owner, operator, manager or other person having control of such building or other area.
- B. Every public place where smoking is prohibited by this regulation shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this regulation by the owner, operator, manager or other person having control of such area.

Sec. 1008. Enforcement

- A. Enforcement of this regulation shall be implemented by the _____ County Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in the County of _____.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the _____ County Health Department.
- D. The Health Department shall inspect for compliance of this regulation.
- E. Any owner, manager, operator or employee of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.

Sec. 1009. Nonretaliation

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this regulation.

Sec. 1010. Violations and Penalties

- A. Willful violation of this Clean Indoor Air Regulation is an unlawful act.
Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:
1. Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this clean indoor air regulation, or
 2. Knowingly violate any other provision of this Clean Indoor Air Regulation.
- B. Any person who smokes or possesses a burning cigarette, cigar or pipe tobacco in an area of a premise where smoking is prohibited with knowledge that he or she is in a non-smoking area commits a willful violation of this Clean Indoor Air Regulation.
- C. Penalties: The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under the provisions of WV Code §16-2-15 against any person who willfully violates this clean indoor air regulation. Enforcement through civil process, includes, but is not limited to a petition for injunctive relief.
- D. Any person who willfully violates this clean indoor air regulation, may be charged with a misdemeanor under WV Code §16-2-15 and, upon conviction, be subject to a monetary fine of between \$50.00 and \$1,000.00 per incident. At the time of the adoption of this Clean Indoor Air Regulation, WV Code §16-2-15 provides as follows:

“§16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations, penalties.

Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.

Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and not more than one thousand dollars.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of Provisions of this article.”

Sec. 1011. Public Education

The _____ County Health Department shall engage in a continuing public education program to explain and clarify the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

Sec. 1012. Other Applicable Laws

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1013. Liberal Construction

This regulation shall be liberally construed so as to further its purposes.

Sec. 1014. Severability

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Sec. 1015. Effective Date

This regulation shall become effective _____.