

BARBOUR COUNTY CLEAN INDOOR AIR REGULATION

100% Minus Free Standing Bars

CLEAN INDOOR AIR PROPOSAL

Public Smoking Regulations proposed by Barbour County Board of Health in accordance with authority granted by West Virginia State Law 16-2-11. The Barbour County Board of Health proposes to invoke the following Barbour County Clean Indoor Air Regulations.

TITLE:

This Regulation shall be known as the Barbour County Clean Indoor Air Regulation.

FINDINGS AND PURPOSE:

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke: (a) is a cause of numerous diseases in healthy nonsmokers; and (b) is a major contributor to indoor air pollution, and (c) that children, elderly people, and individuals with cardiovascular disease, and individuals with impaired respiratory function and /or disease, including asthmatics and those with obstructive airway disease are at special risk.

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

DEFINITIONS:

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- A. "Attached Bar" means an area of a restaurant.
- B. "Business" means any entity formed for profit-making purposes.
- C. "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.
- D. "Employer" means any entity who employs the paid or volunteer services of one or more persons.
- E. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows including doors and passage ways. The "enclosed" area extends 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.
- F. "Free Standing Bar" means an establishment which is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Free Standing bars serve only Ready-To-Eat (RTE) or commercially processed items (may be fresh, frozen, refrigerated, jarred, or canned) which require no additional processing and may be heated, served cold, or at room temperature. Heating may occur in a microwave, on a stovetop or hot plate, in a conventional oven, in a deep fryer or by some other approved means. It does not include any establishment that allows for smoke to filter into non-smoking areas. It is served by a ventilation system that is separate from the ventilation system that serves smoke-free areas. A Free Standing Bar that permits smoking shall prohibit the entry of persons under the age of eighteen.
- G. "Free Standing Limited Video Lottery Room" means a room that is devoted to the placement of limited video lottery machines licensed by the WV Gaming Commission. It has solid walls or windows and is enclosed on all sides. It is served by a separate ventilation system and does not allow for the infiltration of secondhand smoke into any non-smoking area.
- H. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
- J. "Non-Profit Entity" means any entity whose operations are not committed to private financial gain. A public agency is not a "non-profit entity" within the meaning of this section.
- K. "Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.
- L. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a "public place."
- M. "Restaurant" means any establishment that serves food to the public, guests, patrons or employees, as well as kitchens in which food is prepared for service on or off the sight, including catering facilities.
- N. "Retail Store" means any establishment that sells goods or services directly to members of the general public including but not limited to grocery stores, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair and maintenance stores, barber or beauty shops, cleaners and laundromats..
- O. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. It is a facility that does not possess a food service permit.
- P. "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.

REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES:

A. Smoking shall be prohibited in all enclosed public places within Barbour County, including, but not limited to, the following places:

1. Grocery Stores and Convenience Stores
2. Retail Stores, except Retail Tobacco Stores

3. Elevators
4. Restrooms
5. All means of public transit, including ticket, boarding and waiting areas.
6. All waiting areas and lobbies in all business and non-profit entities.
7. Restaurants.
8. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or any subdivision of the State during such time as a public meeting is in progress..
9. All patient rooms, waiting rooms, and other public areas in health care facilities, including but not limited to hospitals, clinics, pharmacies, primary care facilities, physical therapy facilities, doctor's offices, and optometrist's offices.
10. Enclosed shopping malls.
11. Bowling Alleys.
12. Polling Places.
13. Fire Halls.
14. Child Care and Adult Day Care Facilities.
15. Private Schools.

B. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

REGULATION OF SMOKING IN PLACES OF EMPLOYMENT:

A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

B. Within 30 days of the effective date of this article, each employer having an enclosed Place of Employment located within Barbour County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. Smoking shall be prohibited in vehicles owned or leased by the employer.

C. The smoking policy shall be communicated to all employees within three (3) weeks of its' adoption.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

REASONABLE DISTANCE:

To insure tobacco smoke does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems or by any other means, designated smoking areas shall be located at a reasonable distance of at least FIFTEEN (15) feet or more outside any foundation, entrance, exit, operable window or ventilation intake for any building or facility where smoking is prohibited.

WHERE SMOKING IS NOT REGULATED:

A. Notwithstanding any other provision of this Regulation to the contrary, the following areas shall not be subject to the smoking restrictions of this Regulation:

1. Free Standing Bars.
2. Free Standing Limited Video Lottery
3. Private residences, except when used a child care, adult day care or health care facility.
4. 25% of Designated Hotel and Motel rooms rented to guests.
5. Bingo halls that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
6. Retail Tobacco Stores which do not possess a food service permit.

7. The conference or meeting rooms or public and private assembly rooms of hotels, motels, and fraternal organizations while these places are being used for private functions.

8. Residents of personal care homes who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003; such persons must have had Resident status prior to September 4, 2003.

B. Notwithstanding any other provision of this section, any person who controls any establishment described in this section may declare that entire establishment as a nonsmoking facility.

POSTING OF SIGNS:

A. Because rules regulating smoking are primarily self-enforcing , their success depends heavily upon adequate signs.

B. "No Smoking" signs shall be conspicuously posted on all entrances of every building or other place where smoking is controlled by this Regulation, by the owner, operator, manager or other person having control of such building or other place.

C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by the regulation, by the owner, operator, manager or other person having control of such area.

ENFORCEMENT:

A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Barbour County Health Department.

B. Any owner, operator, manager or other person of any establishment regulated by this Regulation shall inform persons violating this Regulation of the appropriate provisions thereof.

NONRETALIATION:

No person or employer shall discharge, refuse to hire or in any other manner retaliate against any employee, applicant or member of the public because such person exercises any rights afforded by this Regulation.

OTHER APPLICABLE LAWS:

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

SEVERABILITY:

If any portion of this Regulation or the application thereof shall be held invalid, the other provisions of this Regulation shall not be affected, and to this end, the provisions of the Regulation are declared severable.

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 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. Any person who smokes or possesses a burning cigarette, cigar or pipe tobacco in 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.

B. Penalties:

(1) Any entity violating any portion of this Regulation shall be charged a \$25.00 reinspection fee payable to the Barbour County Health Department for each occurrence.

(2) The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under W. Va. 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.

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. At the time of the adoption of this Clean Indoor Air Regulation, West Virginia Code 16-2-15 provided as follows:

Chapter 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 issues pursuant to the provisions, for 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.

EFFECTIVE DATE: November 15, 2005