

MARSHALL COUNTY CLEAN INDOOR AIR REGULATION

Public Smoking Regulations adopted by a County Board of Health is in accordance with authority granted by West Virginia State Law, Chapter 16-2-11.

TITLE

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

FINDINGS and PURPOSE

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is (a) a cause of numerous diseases in health nonsmokers; and (b) a major contributor to indoor air pollution; and (c) that children, elderly people, and individuals with cardiovascular and/or respiratory diseases 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 Marshall 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 enclosed public places except in designated smoking areas, and by regulating smoking in 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.

DEFINITIONS

The following words and phrase, whenever used in this regulation, shall be construed as defined in this section.

- A. "Bar" means an area 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. A "bar" for the purpose of this definition has 70% or greater of total sales in alcoholic beverages. And is an establishment in which malt, vinous and/or spirituous liquors are sold for consumption on the premises pursuant to a license. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.
- B. "Attached Bar" means an area in which the serving of food is only incidental to the consumption of alcoholic beverages. A "Bar" for the purpose of this definition does not include any establishment where smoke can filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means.
- C. "Free Standing Bar" for the purpose of this regulation means an establishment that has 70% or greater of total sales in alcoholic beverages. It is a facility that is separated from a non smoking area by location in a separate room or by means of impermeable physical barriers that completely enclose the bar area, and is served by

a ventilation system that is separate from the ventilation system that serves smoke free areas, and prohibits the entry of persons under the age of eighteen.

- D. "Percentage of sales from alcoholic beverages" for the purpose of this regulation shall be calculated by using the following formula: $A = (B/(B + C)) \times 100$ Where A = Percentage of sales from alcoholic beverages. B = Total Sales from alcoholic beverages and C = Total Sales from food.
- E. "Business" means any entity formed for profit-making purposes.
- F. "Dining Area: means any enclosed area containing a counter or table upon which meals are served.
- G. "Employee" means any person employed for direct and indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- H. "Employer" means any entity who employs the paid or volunteer services of one or more persons.
- I. "Enclosed Area" means all space between a floor and ceiling which is enclosed in 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.
- J. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
- K. "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.
- L. "Place of Employment" means any enclosed area under the control of a public or private employer whose employees normally frequent during the course of employment. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
- M. "Public Place" means any enclosed areas to which the public is invited or in which the public is permitted. A private residence is not a "public place."
- N. "Restaurant" means any establishment that serves food to the public, guests, patrons, and employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section A above.
- O. "Retail Store" means any establishment that sells goods or services directly to members of the general public including, but not limited to, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners, and laundromats.

- P. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and in which the sale of other products is merely incidental."
- Q. Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, plant or other smoking equipment 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 Marshall County, including, but not limited to the following places:
1. Grocery Stores and Convenience Stores
 2. Elevators
 3. Restrooms
 4. All means of public transit, including ticket, boarding and waiting areas.
 5. All waiting areas and lobbies in all business and non-profit entities.
 6. Restaurants
 7. 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 political subdivision of the State during such time as a public meeting is in progress.
 8. 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, dentist's offices, and optometrist's offices.
 9. Enclosed shopping malls.
 10. Bowling Alleys
 11. Bingo Games
 12. Polling Places
 13. Fire Halls
 14. Child Care and Adult Day Care Facilities.
 15. Retail Stores.
- B. Non-smoking areas shall be designed so that patrons would not be required to pass through smoking areas on a routine basis in order to patronize an establishment or to reach a non- smoking area
- C. Notwithstanding any other provision of this section any person who controls any establishment or facility described in this section may declare that entire establishment (internal) or facility as non-smoking.
- D. In any dispute arising under this Regulation, the concerns of the non-smoker shall be given precedence.

REGULATIONS OF SMOKING IN ENCLOSED PLACE OF EMPLOYMENT

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

- B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within Marshall 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. 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.

WHERE SMOKING IS NOT REGULATED

- A. Notwithstanding any other provisions 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. Private residences, except when used as a child care or health care facility.
 3. Designated Hotel and Motel rooms rented to guests.
 4. Retail tobacco stores.
 5. 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.
- 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 non-smoking 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 in every building or other place where smoking is controlled by this Regulation, including restrooms and elevators, by the owner, operator, manager or other person having control of such building or other place.
- C. Every establishment where smoking is controlled by this regulation shall have posted at each entrance a conspicuous sign stating that smoking is prohibited.

- D. Facilities that permit smoking must post signs advising patrons of second hand smoke hazards, and that minors are prohibited.
- E. 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.

ENFORCEMENT

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

NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment 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 the Regulation or the application thereof shall be held invalid, the other provisions of the Regulation shall not be affected, and to this end the provisions of this Regulation are declared to be severable.

VIOLATIONS AND PENALTIES

- A. It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this article willfully to fail to comply with any of its provisions.
- B. It shall be unlawful for any person willfully to smoke in any area where smoking is prohibited by the provisions of this article.
- C. Any person who willfully violates this article may be subject to enforcement through civil process, including but not limited to a petition for injunctive relief.

- D. Any person who willfully violates this article shall be in violation of W. Va. Code Chapter 16-2-15, which states:
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 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.

EFFECTIVE DATE

Passed: March 21, 2002

Effective: July 1, 2002

MARSHALL COUNTY BOARD OF HEALTH

Kenneth J. Allen, MD, Marshall County Health Officer

Mr. James Stultz, Chairman, Marshall County Board of Health

Joseph M. Golebiewski, RS. Sanitarian Supervisor