

THE MONONGALIA COUNTY HEALTH DEPARTMENT CLEAN INDOOR AIR REGULATION.

(AMENDING THE MONONGALIA COUNTY CLEAN INDOOR AIR REGULATION AS ADOPTED APRIL 23, 1999).

The Monongalia County Health Department hereby ordains that the Monongalia County Clean Indoor Air Regulation, as adopted on April 23, 1999, is amended as follows (new matter underlined, deleted matter struck through.):

TITLE

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

FINDINGS AND PURPOSE

The United States Surgeon General and other authoritative public health authorities have determined that involuntary inhalation of tobacco smoke (a) is a cause of numerous diseases in healthy non-smokers; (b) is a major contributor to indoor air pollution; (c) places children, unborn children of pregnant women; elderly people, and individuals with cardiovascular and/or respiratory disease at special risk; (d) is a trigger for acute episodes of respiratory distress and myocardial infarction; (e) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers; (f) burdens the health care system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing the public and private expenditures required for the treatment; (g) reduces the life expectancy of persons consistently exposed to secondary smoke and (h) causes substantial losses in productivity through smoking related absences from work and school.

Accordingly, the purposes of this Regulation are (1) to protect the public health and welfare by prohibiting smoking in enclosed public places ~~except in designated smoking areas~~, (2) to ~~prohibit~~regulate smoking in places of employment (3) to 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, (4) to facilitate smoking cessation by active smokers and (5) to discourage non-smokers from taking up the habit and thereby developing a nicotine addiction.

DEFINITIONS

The following words and phrases, 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, excluding liquor, for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. ~~The term "Bar" does not include private clubs.~~
- B. ~~"Business" means any entity formed for profit making purposes.~~
- C. ~~"Dining Area" means any enclosed area containing a counter or tables upon which meals are served.~~

- B. Cigar bar: Means an establishment devoted to the storage, sale and smoking of cigars. A cigar bar must generate 60 percent or more of its total gross annual income from the on-site sale of cigars and the rental of on-site humidors. A humidor means an enclosure or fixture that is stationary and used for the humidification of cigars that is on the premises of the establishment. The cigar bar must prohibit the smoking of all other tobacco products. The cigar bar must be physically separated from any areas of the same or adjacent establishment in which smoking is prohibited. The cigar bar must have an installed on-site humidor.
- C. D. “Employee” means any person employed by an employer for direct and or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- D. E. “Employer” means any entity or person who employs the paid or volunteer services of one or more persons.
- E. F. “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, or partially enclosed with: (i) solid walls or windows, inclusive of doorways; or (ii) solid walls with partitions and no windows, inclusive of doorways that extend from the floor to the ceiling. “Enclosed Area” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind
- F. H. “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.
- G. I. “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. A private residence is not a “place of employment” unless it is used as a child care or health care facility.
B. The dining area of a restaurant is not considered a “place of employment.” that employees are required to enter, leave, or pass through during the course of employment, including private offices; work areas; restrooms; conference and classrooms; break rooms; cafeterias; and other common areas. A private residence, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment. Vehicles provided by an employer for use by employees, during the course of employment shall be considered as places of employment for purposes of these regulations.

- H. “Private Club” means an entity falling within the definition of Private Club as set forth in Section 60-7-2 of the West Virginia Code, for purposes of State Control of Alcoholic Liquors.
- I. ~~J.~~ “Public Place” means any enclosed area to which the public is invited or in which the public is permitted; , regardless of whether the building is owned in whole or in part by private persons or governmental entities. A “public place” includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, educational facilities, nursing homes, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, bars, private clubs, gaming facilities, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, attorney’s and doctor’s offices. A private residence is not a “public place” unless used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises.
- J. ~~L.~~ “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 or maintenance stores, barber or beauty shops, cleaners, and laundromats.
- K. ~~M.~~ “Tobacco Business” means an establishment utilized primarily for the sale of tobacco products and the smoking thereof on site; and at least 75% of the total annual gross sales of the business is from the sale of tobacco and tobacco related products. The sale of such other products shall be considered incidental if such sales generate less than 25% of the total annual gross sales. . A retail tobacco store cannot possess a food service permit.
- L. ~~N.~~ “Smoking” means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, plant or other smoking equipment in any manner or in any form.
- ~~O.~~ “Appropriate ventilation” means ventilation equipment sized and installed to produce sufficient negative air pressure to effectively move air from the smoking area to the outside as proven by a “smoke test.” Heating and colling systems shall have no functioning return air ducts in the smoking area.
- ~~P.~~ “Smoke Test” is the visual detection of the movement of a column of smoke produced anywhere within the smoking area to the outside environment.

REGULATION OF SMOKING IN PUBLIC PLACES

- A. Smoking shall be prohibited in all enclosed public places within Monongalia County, including, but not limited to the following places:
1. ~~_____~~ Grocery Stores
 2. ~~_____~~ Elevators
 3. ~~_____~~ Restrooms

- ~~1.~~ 4. All means of public transit including taxis and buses, and all areas, including ticket, boarding, and waiting areas.
- ~~2.~~ 5. Retail stores, ~~except for areas in said stores not open to the public. Such areas must be provided with “appropriate ventilation” as set forth in letter O under Definitions.~~
- ~~3.~~ 6. ~~All waiting areas and lobbies in all business and non-profit entities. All restaurants, private clubs, video lottery parlors and bars.~~
- ~~7.~~ Restaurants, ~~except that they may designate a contiguous area up to twenty percent (20%) of the seating capacity of the restaurant as a smoking area. Such areas must be provided with “appropriate ventilation” as set forth in letter O under Definitions.~~
- ~~4.~~ 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 political subdivision of the State. ~~during such time as a public meeting is in progress.~~
- ~~5.~~ 9. All patient rooms, waiting rooms and other public areas in health facilities, including, but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctor’s offices, and dentists’ offices.
- ~~6.~~ 10. Enclosed shopping malls.

~~11. Restaurants constructed after the date of adoption of this Regulation, which permit smoking, shall provide a floor to ceiling physical barrier, and separate ventilation between smoking and no smoking areas.~~

- ~~B. No smoking areas shall be designed such 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 no smoking area.~~
- ~~C. B. Notwithstanding any other provision of this section, any person who controls any establishment or facility described in this section may declare that entire establishment or facility as no smoking.~~
- ~~D. C. In any dispute arising under this Regulation, the health concerns of the nonsmoker shall be given precedence.~~

REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT

- ~~A. It shall be the responsibility of employers to provide smoke free areas for non-smoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.~~
- ~~B. No smoking areas shall be designated such that employees would not be required to pass through smoking areas on a routine basis in order to perform job duties or to reach a no smoking area.~~
- ~~C. Each employer shall adopt, implement, make known and maintain a smoking policy~~

which recognizes 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. The policy shall include at a minimum the following requirements:

- ~~1. Any employee in a place of employment shall have the right to designate his or her work area as a no smoking area and to post the same with appropriate signs.~~
- ~~2. In any dispute arising under the smoking policy, the health concerns of the non-smoker shall be given precedence.~~

~~D. The smoking policy shall be shared with any existing or prospective employee who requests it.~~

~~E. Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a no smoking area.~~

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

Smoking shall be prohibited in all 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, vehicles, and all other enclosed facilities.

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

WHERE SMOKING 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. Bars.~~
 1. 2. Private residences, except when used as a child care or health care facility, facility, adult care or other similar social care.
 2. 3. Hotel and motel rooms rented to guests- as follows:
 - a. Upon the adoption of these regulations no more than 20% of hotel or motel rooms rented to guests shall allow smoking therein;
 - b. By January, 2013, no more than 10% of hotel or motel rooms rented to guests shall allow smoking therein;
 - c. By January 1, 2014, 100% of hotel or motel rooms shall be smoke free.
 3. 4. Grandfathered cigar bars or tobacco shops doing business in Monongalia County prior to _____ (date of adoption of this grandfathering amendment) shall be considered as grandfathered and smoking therein shall be considered as grandfathered. Any such existing business desiring grandfathering recognition by the Monongalia County Health

Department within sixty days of the adoption of this grandfathering amendment and provide proof to the Health Department that (1) it meets the definition of either a tobacco business or cigar bar, as defined within these regulations and (2) it was in business as either a tobacco business or a cigar bar prior to the adoption of this grandfathering amendment. No such grandfathered business shall be allowed to expand the square footage of its smoking area beyond that which existed at the time this grandfathering amendment was adopted. Smoke must be actively exhausted from the cigar bar, may not infiltrate into adjoining nonsmoking areas or into adjoining residences, apartments or enclosed public spaces and must be vented to the atmosphere in such manner that it will not be drawn back into the building from which it emanates or into an adjoining structure. Any such grandfathered tobacco business or cigar bar that ceases doing business for more than sixty (60) consecutive calendar days shall lose its grandfathered status and smoking therein shall be prohibited.

- ~~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.~~
- ~~6. A private enclosed office work place occupied by only one person or occupied exclusively by smokers, even though such an office work place may be visited by nonsmokers. However, any employee has the right to designate his/her work area as no smoking, and smoking shall be prohibited in all public waiting areas and lobbies.~~
4. Bingo operations operating under West Virginia Code Section 47-20-28a that distribute more than one hundred bingo cards or bingo sheets, but only for so long as the statutory interpretation of said code section provided by the West Virginia Supreme Court in the case of Foundation for Independent Living et.al. v. The Cabell-Huntington Board of Health, 591 S.E. 2d 749, (W.Va. 2003) remains the law.

- 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 no smoking facility.

POSTING OF SIGNS

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage.
- B. ~~“Smoking” or “No Smoking” signs, whichever are appropriate, shall be prominently 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 restaurant shall have posted at each entrance a prominent sign clearly stating that a no smoking section is available, and that smoking is allowed only in the designated smoking areas.~~

ENFORCEMENT

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the responsibility of the Monongalia County Health Department or its designee.
- 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 way 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 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 this Regulation are declared to be severable.

VIOLATIONS AND PENALTIES

- ~~A. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Regulation.~~
- ~~B. It shall be unlawful for any person who controls the use of any premises subject to regulation under this Regulation to fail to comply with any of its provisions.~~
- ~~C. Any person who violates any provision of this Regulation shall be guilty of an infraction.
 - ~~1. The first infraction shall result in a fine of two hundred fifty dollars (\$250).~~
 - ~~2. A second or subsequent violations within a twelve month period shall result in a fine of five hundred dollars (\$500).~~~~

A. Willful violation of this clean indoor air regulation is an unlawful act.

(1) Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:

- (a) 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
- (b) Knowingly violate any other provision of this clean indoor air regulation.

(2) 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.

B. Penalties:

The Board of Health may, at its option, seek civil relief and/or file a misdemeanor under WV Code §16-2-15 against any person who willfully violates this clean indoor air regulation.

Enforcement through civil process, includes, but 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:

§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

This Regulation, as amended, shall become effective 30 days after the adoption the regulation and publication for three successive days in a newspaper of general circulation in Monongalia County, West Virginia . . . ~~A grace period of one year from the date of adoption is granted for the installation of appropriate ventilation.~~

County Health Officer

Chairman, Board of Health

ADOPTED: _____

FILED: _____