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Gary W. Williams,  
Boone County Clerk

**BOONE COUNTY  
BOARD OF HEALTH**

**2005  
CLEAN INDOOR  
AIR REGULATION**

**APPROVED BY THE  
BOONE COUNTY BOARD OF HEALTH**

*/s/ Onia Jane Howell*

**ONIA JANE HOWELL  
CHAIRPERSON**

06-13-2005

**DATE SIGNED**

**Effective Date: Monday, August 1, 2005**

**Boone County Health Department  
213 Kenmore Drive  
Danville WV 25053**

**A REGULATION ELIMINATING SMOKING  
IN WORKPLACES AND PUBLIC PLACES**

**Effective 09/01/2005**

**Sec. 1000. Title**

This article shall be known as the Boone County Clean Indoor Air Regulation of 2005

**Sec. 1001. Findings and Purpose**

The Boone County Board of Health does hereby find that:

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is (a) a cause of numerous diseases in health of nonsmokers' (b) a major contributor to indoor air pollution: and (c) the 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 Boone 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 and by regulating smoking in place 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 enclosed public places, the regulations of [boards of health] address a serious health issue which the Legislature has recognized.... 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....." Excepted from the December 2, 2003 WV Supreme Court Decision #31120.

**Sec. 1002. Definitions**

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

1. "Attached Bar" means a bar area of a restaurant, An "attached bar" for the purpose of this ordinance shall not include any area where full meals are served, but may include the service of appetizers and snacks. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

2. "Freestanding Bar" means an establishment which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the service 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. A Free Standing bar that permits smoking shall prohibit the entry of persons under the age of eighteen (18).
3. 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, enclosed on all sides which is served by a separate ventilation system and does not allow for the infiltration of secondhand smoke into any non smoking area.
4. "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.
5. "Employee" means any person who is employed by an employer in the consideration of direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
6. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
7. "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.
8. "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 class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
9. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, bingo halls, and waiting rooms. A private residence is not a "public place."

10. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale good to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Sections 1002(1) and 92).
11. "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.
12. "Service Line" means any indoor 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.
13. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe, weed, plant or other combustible substance in any manner or in any form.
14. "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.
15. A "private function" shall be defined as a function in which no fee is charged and no tickets are sold, and no public announcements are made to the event and/or function.

### **Sec. 1003. Application of Article to City-County owned facilities**

All enclosed facilities including buildings and vehicles owned by Boone County or any city/town located in Boone County shall be subject to the provisions of this article.

### **Sec. 1004. Prohibition of Smoking in Public Places**

- A. Smoking shall be prohibited in all enclosed public places within Boone County, including but not limited to the following places:
  1. Elevators.
  2. Restrooms, lobbies, reception areas, hallways and any other common use areas.
  3. Public or private buses, taxicabs, and other means of public transit, ticket, boarding, and waiting areas of public transit depots.
  4. Service lines.
  5. Retail stores.
  6. All areas available to and customarily used by the general public in all business and non-profit entities patronized by the public, including but not limited to, attorneys offices, and other offices, banks, Laundromats, hotels and motels.

7. Restaurants (including outdoor seating areas.)
8. Public areas of aquariums, galleries, libraries and museums.
9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
10. Sports arenas and convention halls, including bowling facilities.
11. 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 agencies of Boone County or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of Boone County.
12. Waiting rooms, hallways, wards, private and semiprivate rooms of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' or dentists' offices, and other health care providers
13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. Polling places.
15. Bingo games.
16. Auction houses and indoor flea markets.

- B. Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

**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, but employers are not required to incur any expense to make structural or other physical modifications.
- B. Within 30 days of the effective date of this article, each employer having an enclosed place of employment located within Boone 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.

**Sec. 1006. Reasonable Distance**

Designated smoking areas shall occur at a reasonable distance of 15 feet or more outside any entrance, exit, or ventilation units of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

**Sec. 1007. Where Smoking Is Not Regulated**

- A. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from sec. 1005:
1. Freestanding bars which meet the requirements of Section 1002(2) of this article.
  2. Private residences, except when used as a childcare, adult day care or health care facility.
  3. No more than twenty five percent (25%) of hotel and motel rooms rented to guests.
  4. Private assembly rooms while these places are being used for private functions.
  5. Outdoor areas of places of employment except those covered in Section 1006 of this article.
- B Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

**Sec. 1008. 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 article, 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 Article 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 article by the owner, operator, manager or other person having control of such area.

**Sec. 1009. Enforcement**

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

**Sec. 1010. Non-retaliation**

No person or employer shall discharge, refuse to hire or 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 article.

**Sec. 1011. Violation and Penalties**

- A. It shall be unlawful for any person who owns, managers, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
- C. Any person who violates any provision of this article shall be guilty of infraction of Chapter 16 of the West Virginia State Laws. Penalty will be set forth by Chapter 16-2-15 of the West Virginia State Laws which states:

**‡ 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 of orders adopted or issued pursuant to the provision, 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. 1012. Public Education**

The Boone County Health Department shall engage in a continuing 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. 1013. Other Applicable Laws**

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

**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 article shall be effective August 1, 2005.

**FILING**

This document shall be filed with the Clerk of the Boone County Commission within five (5) days of its passage.

**ADOPTION**

Adopted: **June 9, 2005**

Boone County Board of Health

*/s/ Onia Jane Howell*

Chairperson

State of West Virginia, County of Boone, to Wit:  
Subscribed and sworn before me this 13<sup>th</sup> day of June 2005.  
My commission expires November 21, 2010

*/s/ A. Michael Vickers*

Notary Public

(SEAL)

