

**Gilmer County Health Department
Local Tobacco Regulation**

TITLE:

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

FINDINGS AND PURPOSES:

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is (a) a cause of numerous diseases in healthy 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.

Accordingly, the purposes of this Regulation are to (1) 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 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 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 service of alcoholic beverages for the consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term 'bar' shall not include the restaurant dining area.
- 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.
- D. "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.
- E. "Employer" means any entity who employs the paid or volunteer services of one or more persons.
- 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.
- G. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishment.
- 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.

- I. "Place of Employment" means any enclosed 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 care facility.
 - b. The dining area of a restaurant is not considered a "place of employment".
- J. "Public place" means any enclosed area to which the public is permitted. A private residence is not a "public place".
- K. "Restaurant" means any establishment which is primarily devoted to the serving of 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.
- 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.
- M. "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.
- N. "Smoking" means inhaling, exhaling, or carrying any lighted cigar, cigarette, pipe, plant or other smoking equipment in any other manner or in any form.

REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES

- A. Smoking shall be prohibited in all enclosed public places within Gilmer County including, but not limited to the following places:
 - 1. Grocery Stores.
 - 2. Elevators.
 - 3. Restrooms.
 - 4. All means of public transit, including ticket, boarding and waiting areas.
 - 5. Retail stores, except areas in said stores not open to the public and all areas within retail tobacco stores.
 - 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 political 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 facilities, including but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctor's offices and dentist's offices.
- 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 nonsmoking.

- 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 nonsmoking 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. Nonsmoking areas shall be designated so 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 nonsmoking area.
- C. Each employer shall adopt, implement, make known and maintain a smoking policy which recognizes that were 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 nonsmoking area and to post the same with appropriate signs.
 2. In any dispute arising under the smoking policy, the health concerns of the nonsmoker 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 nonsmoking area.

WHERE SMOKING IS NOT REGULATED

- A. Notwithstanding any other provision of the Regulation to the contrary, the following areas shall not be subject to the smoking restrictions of the Regulation.
1. Bars
 2. Private residence, except when used as a child care or health care facility.
 3. 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.
 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 nonsmoking, and smoking shall be prohibited in all public waiting areas and lobbies.
- 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 signage.
- B. 'No Smoking' signs shall be posted on the entrance doorways within six (6) inches of the door handle in 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. All elevators and restrooms will also be posted on the entrances with notification that they are non-smoking areas.

ENFORCEMENT

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Gilmer County Health Department.
- B. Any owner, operator, manager or other person of any establishment regulated by the 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 manner retaliate against any employee, applicant for employment or member of the public because such person exercises any right afforded by this Regulation.

OTHER APPLICABLE LAWS

This Regulation shall not be interrupted 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 the 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 the 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 described under 16-2A-10 of the Laws of West Virginia Relating To Public Health.

EFFECTIVE DATE

This Regulation shall become effective ninety (90) days from the date it is recorded at the Gilmer County Clerk's office.

ADOPTED AND PROMULGATED THIS 21st DAY OF JANUARY 1997.

Chairman Gilmer County Board of Health