

# McDowell COUNTY CLEAN INDOOR AIR REGULATION

## TITLE

This Regulation shall be known as the McDowell 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 of 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 McDowell 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 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.

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....." Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.

## DEFINITIONS

The following words and phrases, whenever used in this regulation, 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 employed for direct and indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- D. "Employer" means any entity that 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 in all sides by solid walls or windows including doors or 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, 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.
- H. “Grocery Store” means any supermarket, convenience store, and other retail food production and marketing establishments.
  - I. “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.
- J. “Place of Employment” means any enclosed area under the control of a public or private employer whose employees normally frequent this area 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.
- K. “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.”
- L. “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.
- M. “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.
- N. “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. It is a facility that does not possess a food service permit.
- O. “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 McDowell County, including, but not limited to the following places:
  1. Grocery Stores and Convenience Stores.

2. Retail 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, dentist'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

#### **REGULATIONS OF SMOKING IN ENCLOSED PLACE OF EMPLOYMENT**

- A. It shall be the responsibility of the 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 McDowell 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.**
- 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.
- E. There may be a separate Employee Break room that permits smoking if it is enclosed, and has a separate ventilation system. This area would not be open to the general public. There must also be a separate nonsmoking employee break room, if smoking is permitted.

#### **REASONABLE DISTANCE**

Designated smoking areas shall occur at a reasonable distance of fifteen **(15)** feet or more outside any entrance, exit, or ventilation units of any buildings or

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. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.

#### **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. Free Standing Limited Video Lottery Rooms
  3. Private residences, except when used as a child 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, prior to September 4, 2003, of personal care home, who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003
- B. Notwithstanding any other provisions of this section, any person who controls any establishment described in this section may declare that 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 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 this regulation by the owner, operator, manager, or other person having control of such area.
- D. Facilities that permit smoking must post signs advising patrons of secondhand smoke hazards.

#### **HEALTH WARNING**

**SMOKING IS PERMITTED WITHIN THIS FACILITY, YOU WILL BE EXPOSED TO SECONDHAND SMOKE. SUCH EXPOSURE CAN CAUSE OR CONTRIBUTE TO CANCER, HEART DISEASE, RESPIRATORY ILLNESS, AND OTHER SERIOUS HEALTH PROBLEMS.**

## **ENFORCEMENT**

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the McDowell 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 to be 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. 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 a 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 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 complaint under W.VA. Code 16-2-15 against any person who willfully violates this clean indoor air regulation.

Enforcement though 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 W.Va. 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 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:**

July 1, 2006.