

**THE MONONGALIA COUNTY HEALTH DEPARTMENT
CLEAN INDOOR AIR REGULATION**

The Monongalia County Health Department hereby ordains that the Monongalia County Clean Indoor Air Regulation, as adopted on April 23, 1999, is amended as:

TITLE

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

Carye L. Blaney
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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 (2) to prohibit 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, for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
- b. "Cigar Bar" means an establishment devoted to the storage, sale and smoking of cigars. A cigar bar must generate 60% 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. Access to the establishment must be street or side walk entrance. The cigar bar must have an installed on-site humidor and the establishment must have appropriate ventilation with no functioning return air ducts in the smoking area.
- c. "Hookah Lounge" means an establishment where patrons share tobacco from a communal hookah which is placed at each table. The smoking of all other tobacco products is prohibited. This establishment shall not be granted a food establishment permit. A food establishment permit would disqualify the establishment as a Hookah Lounge.

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453 VAN VOORHIS RD
MORGANTOWN, WV 26505-3408

- d. "Employee" means any person employed by an employer for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- e. "Employer" means any entity or person 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, 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.
- g. "Place of Employment" means any enclosed area under the control of a public or private employer 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. "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. "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. "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 are 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 establishment permit.
- l. "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.

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. All means of public transit including taxis and buses, and all areas, including ticket, boarding and waiting areas.
 2. Retail stores and tobacco businesses.
 3. All restaurants, private clubs, video lottery parlors and bars.
 4. 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.
 5. All patient rooms, waiting rooms and other public areas in health facilities, including, but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctors' offices and dentists' offices.
 6. Enclosed shopping malls.
- B. 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

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 contain 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 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. Hookah lounges
 2. Private residences, except when used as a child care facility, adult care, foster care or other similar social care.
 3. Cigar bars doing business in Monongalia County prior to date of adoption of this Regulation 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 shall provide proof to the Health Department that (1) it meets the definition of a cigar bar, as defined within this regulation and (2) was in business as a cigar bar prior to the adoption of this Regulation. No such grandfathered business shall be allowed to expand the square footage of its smoking area beyond that which existed at the time this Regulation was adopted. Smoke must be actively

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. Violations:**

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 smoking 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 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 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.

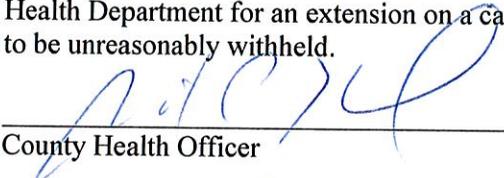
Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished 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.

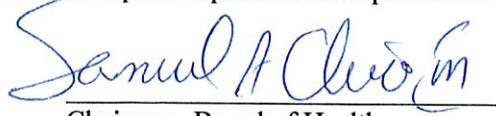
Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of provisions of this article.

EFFECTIVE DATE

This Regulation, as amended, shall become effective 60 days after Board of Health adoption and a Notice of Publication for three successive days in a newspaper of general circulation in Monongalia County, West Virginia. Existing establishments covered by this Regulation may apply to the Monongalia County Health Department for an extension on a case by case basis to meet capital improvement requirements not to be unreasonably withheld.



County Health Officer



Chairman, Board of Health

AMENDED: 1-9-2012

FILED: _____