

**A REGULATION ELIMINATING SMOKING
IN WORKPLACES AND PUBLIC PLACES**
Effective 11-24-2004

Sec. 1000. Title

This article shall be known as the Raleigh County Clean Indoor Air Regulation of 2004.

Sec. 1001. Finding and Purpose

The Beckley-Raleigh County Board of Health does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm.

Accordingly, the Beckley-Raleigh County Board of Health finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

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 purposes 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 serving of food is only incidental to the consumption of such beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets. For the purposes of this regulation, a "freestanding bar" means an establishment whose gross sales of alcoholic beverages are 80% or greater of their total gross sales.
3. "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.

4. “Employee” means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
5. “Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
6. “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.
7. “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.
8. “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, 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.”
9. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food 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 (2).
10. “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.
11. “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.
12. “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.
13. “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.
14. 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-Owned [County-Owned] Facilities

All enclosed facilities including buildings and vehicles owned or leased by the City of Beckley or Raleigh 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 Raleigh County, including, but not limited to, the following places:
1. Elevators.
 2. Restrooms, lobbies, reception areas, hallways and other common-use areas.
 3. Buses, taxicabs, and other means of public transit under the authority of Raleigh County, and 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 businesses 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 Raleigh 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 Raleigh County.
 12. Waiting rooms, hallways, wards, private and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, and any 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. Auction houses and indoor flea markets.
- B. Notwithstanding any other provision 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 smokefree workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.
- B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within Raleigh County shall adopt, implement, make known and maintain a written smoking policy which 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 10 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 child care, adult day care or health care facility.
 - 3. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
 - 4. Restaurants, hotel and motel conference or meeting rooms and public and 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.
 - 6. Residents, prior to September 4, 2003, of personal care homes, who had smoking privileges under WV 64 C.S.R. 14-8.12.3, as stipulated in Case No. 31120 of the Supreme Court of Appeals of West Virginia, filed December 2, 2003.

7. Bingo halls who distribute more than one hundred bingo cards or bingo sheets at any bingo occasion as allowed under WV Code Section 47-20-28a, as stipulated in Case No. 31120 of the Supreme Court of Appeals of West Virginia, filed December 2, 2003.
 8. Any fraternal organization who has IRS status 501c8, 501c10 or 501c19.
- 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 Beckley-Raleigh County Health Department, or his or her designee.
- C. Notice of the provisions set forth in this article shall be given to all applicants for a business license in Raleigh County.
- D. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Beckley-Raleigh County Health Department.
- E. The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.

Sec. 1010. Non-retaliation

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smokefree environment afforded by this article.

Sec. 1010. Violations and Penalties

- A. It shall be unlawful for any person who owns, manages, 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 an infraction of Chapter 10 of the West Virginia State Laws. Penalty will be as 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 no 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.

Sec. 1012. Public Education

The Beckley-Raleigh County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance 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 ordinance.

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 thirty (30) days from and after the date of its adoption.

