

Fundamentals of Smoke-Free Work & Public Place Regulations

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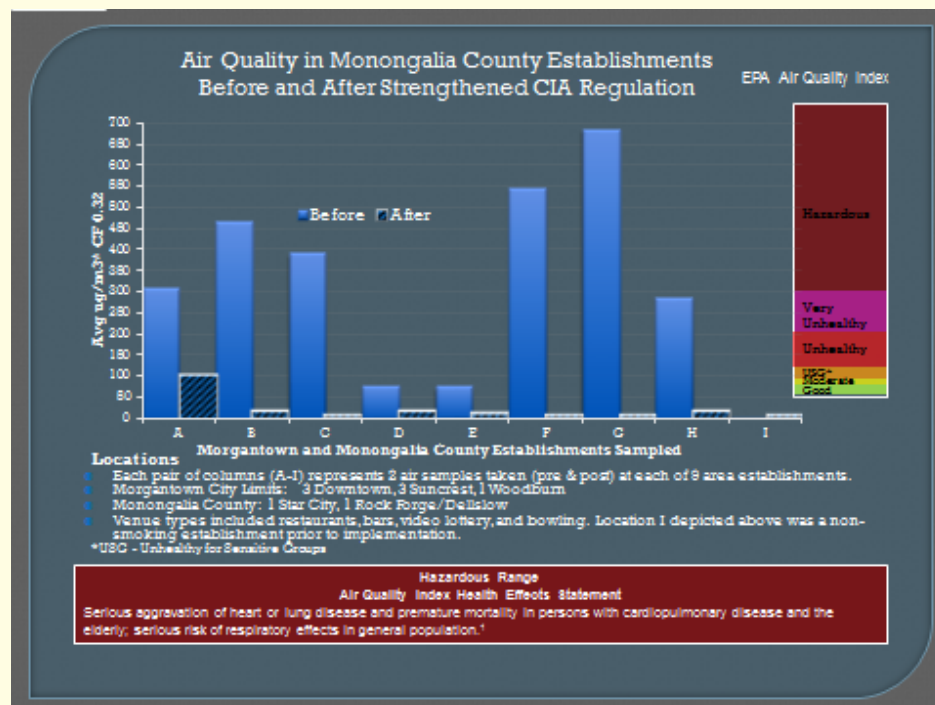


Public health justifications for clean indoor air regulations

- Secondhand smoke (SHS)
 - Poisonous toxins
 - Known health risks
- Major conclusions of the U.S. Surgeon General report
 - No safe level of exposure to SHS
- “The Health Consequences of Smoking—50 Years of Progress,” a report of the Surgeon General, 2014

Public Health Objectives

- Safe air quality in public places.
- Increase access into public places.
- Decrease heart attacks rates.
- Decrease SHS exposure in the home.
- Decrease youth tobacco initiation.



When dealing with the adoption of public health rules, it is far better to go above and beyond any minimal legal requirements for public notifications of meetings, agendas and public forums.

Checklist

- Ensure the Board of Health's (BOH) compliance with magisterial districts, political and professional composition.
- Ensure that the BOH bylaws are up to date and in accordance with WV State Code and Open Governmental Meeting (OGM) requirements.
- Ensure the BOH strictly follows its bylaws.
- Ensure all new and reappointed BOH members take an Oath of Office prior to engaging in any BOH roles.
- Ensure that the agenda properly reflects any potential discussion or action.
- Ensure the BOH provides adequate public notice of its meetings and agenda.

Role of Local Health Officer

The Local Health Officer (LHO) can play an important role in the launch of a local public health initiative.

Local Health Officers are often well positioned to take advantage of opportunities to provide education about health promotion initiatives to residents, local officials, and public health system partners.

Engaging the healthcare community.

- Healthcare professionals are an important component of almost every smoke-free air campaign.
- Doctors, dentists, nurses, dental hygienists, and healthcare students have a shared interest in promoting and protecting public health; many are well-known and well-respected within their communities.

Seeking out grassroots organizations.

- Policy sponsors can play a key role.
- A grassroots base of support can play an important role.



Assessing Community Readiness

- What is the community level of awareness of the dangers of SHS exposure?
- Number and smoking status of food service permits, gaming, bingo operations, hotel/motels.
- Presence and number of retail tobacco, vape operations.
- Outdoor public settings (parks and recreational).
- Types of fairs and festivals.
- Public housing and multiunit dwellings.
- Outdoor property of healthcare facilities.
- Grassroots support.
- Cessation resources.



Developing a Regulation

- Start with a model regulation.
- Define enclosed area.
- Avoid exemptions.
- Cover all enclosed workplaces.
- Include electronic smoking devices.
- Address outdoor public places.
- Account for hotel/motels.

"There are very few issues of taste about which people of all ages, genders and geographic regions can agree. That's why it catches our attention when an issue garners the overwhelming support of the public. And it is clear from our surveys that the vast majority of Americans prefer their restaurants, bars and clubs to be smoke-free.¹¹

*- Tim Zagat, CEO, Zagat Survey
Philadelphia Business Journal*

The Adoption Process

Introduction or presentation of proposal-BOH or community member.

Discussion and changes-At a subsequent meeting(s), the board can discuss and make edits and changes to the proposal. A copy of the proposal should be sent to the county prosecuting attorney with a request for a review.

Written public comment-There is no legal requirement for the BOH to solicit public comment or to hold public forums, but these are both highly recommended practices that educate the community on the issue, create awareness and allow for citizens' comments on the pending regulation change.

Public forums-Boards can allow time on the agenda of regularly scheduled meetings for public comments or, if bylaws permit, special meetings can be established.

The final vote- A board may take a final vote once the public comment period has ended and the final version of the regulation has been approved. The agenda must reflect that a vote may take place.

Establish effective date-*Choose Your Implementation Date Wisely*

Filing the regulation as public record-A signed copy must be filed in a separate book with the county and/or city clerks office.

Public Education

This is achieved by disseminating educational materials and your expertise with individuals and groups in your community.

- Editorial board
- Letter writing
- Presentations to community organizations
- Talk radio appearances
- Educational radio and newspaper ads



Implementation

- Public education about the regulation is another critical component of efforts to increase compliance.
- It is recommended that a copy of the newly amended regulation, signage and cessation information be mailed to all businesses in the county.
- Use of websites, other social media, and billboards to promote the regulation is recommended.
- Establish and educate the public on how to file a complaint.
- During this period, health department staff can make educational visits to workplaces to enhance awareness of regulation and educate operators on the new regulation and how to come into compliance.

Transitioning to Smoke-Free

- Like any change, going smoke-free involves an adjustment period. The length of the adjustment period is almost always reflected by management's support or lack of support of the new regulation.
- HD can provide implementation resources and training.
- Management's attitude toward enforcing a new smoke-free regulation is generally the most important factor in implementing the change successfully.
- Staff preparation is one of the most important steps in ensuring a smooth transition to a smoke-free workplace.
- After a short transition, everything typically returns to normal, and in most cases, even better. Business owners will find less resistance from customers and employees than they expect.
- Discord between business owners and enforcement officers puts customers in an awkward and uncomfortable position and keeps customers away.

Compliance Efforts

- The goal is compliance, not enforcement.
- Smoke-free regulations are self-enforcing and produce high levels of compliance, with only a handful of businesses not complying and outright defiance is even rarer.
- Persistent compliance efforts by a HD can often pull a facility into compliance without the need to proceed to magistrate or circuit court.
- The level of compliance that can be achieved is determined by the number of exemptions, loopholes and complicated language in the regulation.
- The posting of signage is an important component of any smoke-free regulation.
- It is an owner or operator's responsibility to gain and maintain compliance of smoke-free regulations. This is no different than other public health and safety laws.

Dealing with Complaints

- Complaints are a good indicator of the overall level of awareness and compliance.
- Create and promote a complaint filing process to the public.
- Consider a hotline number or separate voice mailbox for reporting complaints.
- The health department should try to work in cooperation with the prosecuting attorney to attempt to bring a facility into compliance.
- Utilize administrative hearings.
- Assess inspection fee or repeat visits for non-compliance.
- A food service permit cannot be suspended for violations of smoke-free regulations.

Enforcement Action

- If all efforts to gain compliance fail, enforcement actions may be necessary.
- Before proceeding to court, health departments must ensure they have ample documentation and evidence that a business owner or other person has willfully violated a smoke-free regulation.
- Most often, efforts will be directed against the owner/operator of the facility and/or permit holder for failure or refusal to comply with provisions of the regulation.

CRIMINAL COMPLAINT

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about 10/27/2005 in Braxton County, West Virginia, in violation of W.Va. Code (cite specific section, subsection, and/or subdivision as applicable) 16-2-11(b)(3) & 16-2-15 the defendant did (state statutory language of offense) knowingly violate the Braxton County Clean Air Regulation, originally adopted October 1, 1995, last ammended January 25, 2005, which prohibits smoking in enclosed public places and enclosed places of employment. Cont. on attached sheet.

I further state that this complaint is based on the following facts: During a clean air inspection of the Elk Lunch, I witnessed the presence of ashtrays and smoking within the establishment.

Penalties § 16-2-15

Enforcement § 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.

Assistance from Other Regulatory Agencies

- Many regulatory agencies allow for the suspension of their permits once a violator has been given their due process in court and a conviction is upheld.
- Once a conviction is obtained or injunction is issued, it demonstrates that the establishment has violated a public health law.
- For example, a copy of the court documents can be sent to the Alcohol Beverage Control Administration. Generally, the ABCA commission will issue a stern warning or suspend and assess fines against the facility.
- A warning or permit suspension of a liquor license and loss of limited video lottery revenues usually produces immediate compliance.

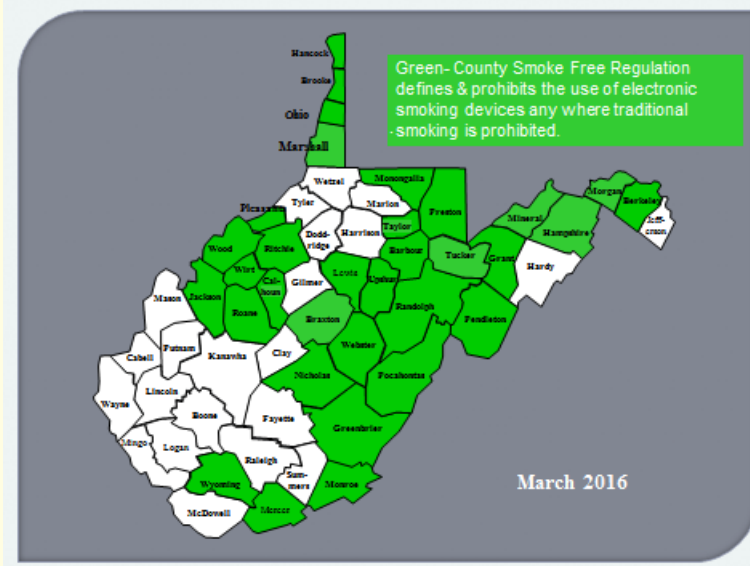
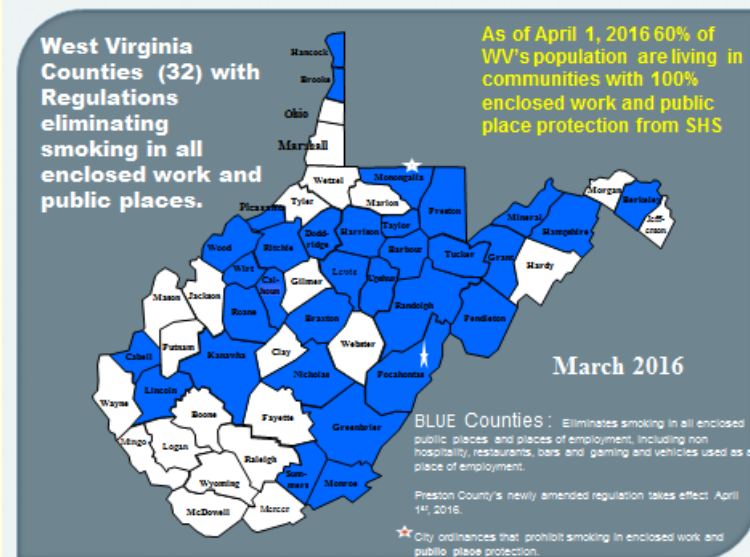
Injunctive relief

WV § 16.3.6. Nuisances Affecting Public Health: The BOH can also petition the circuit court for injunctive relief to stop or abate the blatant violation of a public health law.



Status of WV SF Regulations

- By 2008, all 55 WV counties had a clean indoor air regulation in place.
- 52 counties with restaurant workplace protection.
- 49 counties with non-hospitality workplace protection.
- 32 counties with all enclosed work and public place protection.
- 33 counties prohibit the use of electronic cigarettes.



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