

## **HARDY COUNTY BOARD OF HEALTH CLEAN INDOOR AIR REGULATION**

### TITLE

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

### FINDINGS AND PURPOSE

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.

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

Accordingly, the purposes of this regulation 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 smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

### 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 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. A "bar", for the purpose of this definition, does not include any establishment where tobacco smoke can filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means. A "bar", for the purpose of this regulation, shall not include any area where full meals are served, but may include the service of appetizers and snacks.
- B. "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.
- C. "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.
- D. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

- E. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors 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.
- F. "Grocery Store" means any supermarket, convenience store, or any other retail food production and marketing establishment.
- G. "Non-Profit Entity" means any entity whose operations are not committed to private financial gain or profit. A public agency is not a "non-profit entity" within the meaning of this section.
- H. "Place of Employment" means any enclosed area under the control of a public or private employer which employees non-natty 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.
- I. "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, grocery stores, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- J. "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 this section.
- K. "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.
- L. "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.
- M. "Service Line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- N. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant, or other combustible substance in any manner or in any form.
- O. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, 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.

#### REGULATION OF SiNtOKING IN PUBLIC PLACES

- A. Smoking shall be prohibited in all enclosed public places within Hardy County, including but not limited to the following places:
1. Grocery stores.
  2. Elevators
  3. Restrooms, lobbies, reception areas, hallways, and any other common-use areas.
  4. Buses, taxicabs, all other means of public transit, as well as ticket, boarding, and waiting areas of public transit depots.
  5. Service lines.
  6. Retail stores.
  7. 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, attorney's offices and other offices, banks, laundromats, hotels and motels.
  8. Public areas of galleries, libraries, and museums which are open to the public.
  9. Restaurants, except that 25% of seating in a defined area may be designated as a smoking area.
  10. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance, except performers when smoking is part of a stage production.
  11. Sports arenas and convention halls
  12. 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 the County or any political subdivision of the State during such time as a public meeting is in progress.
  13. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
  14. Polling places.
- 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.
- C. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

#### REGULATION OF SMOKING IN PLACES OF EMPLOYMENT

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur expense to make structural or other physical modifications.
- B. Within 90 days of the date of this regulation, each employer having an enclosed place of employment located within Hardy 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 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 weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

#### REASONABLE DISTANCE

Smoking shall occur at a reasonable distance outside 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.

#### 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. Bars.
  - 2. Private residences, except when used as a child care, adult day care, or health care facility.
  - 3. Twenty-five percent (25%) of hotel and motel rooms rented to guests.
  - 4. Retail tobacco stores.
  - 5. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
- B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.

#### 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, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this regulation, including restrooms and elevators, 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 regulation 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 regulation by the owner, operator, manager, or other person having control of such area.

#### ENFORCEMENT

- A. Enforcement of this regulation shall be implemented by the Hardy County Health Department.
- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the

Hardy County Health Department.

- C. Any owner, manager, operator, or employee of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.
- D. Notwithstanding any other provision of this regulation, a private citizen may bring legal action to enforce this regulation.

#### NONRETALIATION

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 regulation.

#### 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 regulation 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 regulation.
- C. Any person who violates any provision of this regulation shall be guilty of an infraction under Chapter 16-2A-10 of the West Virginia Code.
- D. Any person who willfully violates any of the provisions of this regulation shall be guilty of a misdemeanor, and upon conviction shall be punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100) for a first violation
  - 2. A fine not exceeding two hundred dollars (\$200) for a second violation of this regulation within one year.
  - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation of this regulation within one year.

#### PUBLIC EDUCATION

The Hardy County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this regulation 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 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 provision, clause, sentence, or paragraph of this regulation or the application thereof to any

person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

EFFECTIVE DATE

This regulation shall be effective April 1, 2000.

Hardy County Board OF Health

RUTH K. JUDY, CHAIRPERSON  
MORTIMER GAMBLE, JR, MEMBER  
GERALD HOTTI, MEMBER  
BRENDA PEER, MEMBER  
PATRICIA SHOEMAKER, MEMBER

DEWEY F. BENSENHAVER, MD, HEALTH OFFICER

PROMULGATED UNDER AUTHORITY GRANTED BY CHAPTER 16, ARTICLE 2A, SECTION 3 CODE OF WEST VIRGINIA