

MARSHALL COUNTY

CLEAN AIR REGULATION OF 2013



By
MARSHALL COUNTY BOARD OF HEALTH

Donald Mason, Chairman
Janet Kendzierski, Vice-Chair
Robert Riggerbach
Carol Wade
Shirley Byard

Effective April 1, 2013

**THE MARSHALL COUNTY HEALTH DEPARTMENT
CLEAN AIR REGULATION**

SECTION 1000. TITLE

This Regulation shall be known as the Marshall County Clean Air Regulation.

SECTION 1001. 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.

Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.... "In attempting to minimize the effects of tobacco smoke on the general public in 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....."

Accordingly, the purposes of this Regulation are:

1. to protect the public health and welfare by prohibiting smoking in 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.

SECTION 1002. 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. A "bar" for the purpose of this definition has 70% or greater of total sales in alcoholic beverages; and is an establishment in which malt, vinous and/or spirituous liquors are sold for consumption on the premises pursuant to a license. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area. "Private Clubs" are included in this definition.
- 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 employed by an employer for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- d. "Employer" means any entity or person who 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, 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.
- f. "Healthcare Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitation hospitals, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialist within these professions. Healthcare facility includes all waiting rooms, hallways, private rooms, semiprivate rooms, and any adjacent outdoor property under its control.
- g. "Hotel" means any facility, building or buildings, publically or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping

accommodations. The term shall include, but not be limited to boarding houses, hotels, motels, inns, courts, condominiums, city parks offering accommodations. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or where a university or college housing unit provides sleeping accommodations for the general public for a consideration, the term "hotel" shall, if otherwise applicable apply to such accommodations for the purpose of this regulation.

- h. "Limited Video Lottery Room" as defined in WV Chapter 29, Limited Video Lottery Act.
- i. "Percentage of sales from alcoholic beverages" for the purpose of this regulation shall be calculated by using the following formula:

$$A = \frac{B}{B + C} \times 100$$

where A = Percentage of sales from alcoholic beverages.
 B = Total Sales from alcoholic beverages
 C = Total Sales from food

- j. "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.
- k. "Public Place" means any 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, hotel and motels, restaurants, retail stores, offices, bingo operations, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, educational facilities, 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, public and private educational facilities, ticket areas, public hearing facilities, public restrooms, waiting

areas, churches, attorneys' and doctors' 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.

- l. "Restaurant" means any establishment that serves food to the public, guest, patrons, and employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 1002 above.
- m. "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.
- 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
- o. "Service Line" means any 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.
- p. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an electronic cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.
- q. "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.

SECTION 1003. REGULATION OF SMOKING IN PUBLIC PLACES

- A. Smoking shall be prohibited in the following public places within Marshall County, including:
1. All means of public transit including taxis and buses, and all areas, including ticket, boarding and waiting areas.
 2. Public areas of aquariums, galleries, libraries and museums.
 3. Child care and adult day care facilities.
 4. Retail stores.
 5. Restaurants
 6. 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.
 7. 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.
 8. Enclosed shopping malls including indoor flea markets.
 9. All Hotel and motels.
 10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing, homes, and other multiple-unit residential facilities.
 11. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
 12. Sports arenas and convention halls, including bowling facilities.
 13. Polling places.
 14. Auction houses.
 15. All fire department facilities
 16. All emergency medical services facilities
- B. Smoking shall be prohibited in the following outdoor public places within Marshall County:
1. Outdoor service lines, ticketing areas and boarding areas.
 2. Concourse areas of stadiums and outdoor seating of recreational venues.
 3. Outdoor serving areas of restaurants.
 4. All outdoor property, including parking lots and sidewalks of healthcare facilities.
 5. Public parks, including pavilions.
 6. Playgrounds, ball fields, swimming pools, etc.
 7. All areas of fairs and festivals and all other outdoor venues with the exception of Health Department approved outdoor designated smoking areas.
- C. In any dispute arising under this Regulation, the health concerns of the nonsmoker shall be given precedence.

- D. Designated Outdoor Smoking Areas: To ensure the public access into public venues free from tobacco smoke exposure and to prevent tobacco smoke from entering protected areas, outdoor designated smoking areas shall occur at a distance of 15 feet or more outside any entrance, exit, or ventilation units of any buildings or enclosed area where smoking is prohibited. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.

SECTION 1004. 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 Marshall 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.

SECTION 1005. 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. Private residences, including individual apartments or housing units which are part of a multi-unit residential housing project or apartment building, except when used as a child care facility, adult care, foster care or other similar social care.
 2. Bars, private clubs, bingo operations, limited video lottery rooms, and tobacco stores.
- B. Notwithstanding any other provision of this section, any person who controls any establishment described in this section may declare that entire establishment as a non-smoking facility.

SECTION 1006. POSTING OF SIGNS

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage.
- B. "No Smoking" signs shall be prominently posted in 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. 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.
- D. 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.
- E. Businesses and operations not covered in this regulation must post signs advising patrons of second hand smoke hazards, and that minors are prohibited.

SECTION 1007. ENFORCEMENT

- A. Enforcement of this article shall be implemented by the Marshall County Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the County of Marshall.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Marshall County Health Department.
- D. The Health Department shall inspect for compliance of this regulation.
- E. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

SECTION 1008. NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any way retaliate against any employee, applicant for employment or member of the public because such person exercises any rights afforded by this Regulation.

SECTION 1009. 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.

SECTION 1010. 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.

SECTION 1011. VIOLATIONS AND PENALTIES

A. Violations:

Willful violation of this Clean 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 Air Regulation, or

(b) Knowingly violate any other provision of this Clean Air Regulation.

(2) Any person who smokes 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 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 Air Regulation.

Enforcement through civil process, includes, but is not limited to a petition for injunctive relief.

Any person, who willfully violates this Clean 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 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.

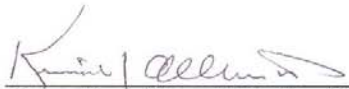
SECTION 1012. EFFECTIVE DATE

This Regulation, as amended, shall become effective on April 1, 2013 after Board of Health adoption and a Notice of Publication for three successive days in a newspaper of general circulation in Marshall County, West Virginia.

This Regulation shall supersede previous Marshall County Health Department Clean Indoor Air Regulations.

SECTION 1013. REPEAL AND REPLACEMENT OF FORMER REGULATION

This regulation repeals and replaces the Marshall County Board of Health Clean Indoor Air Regulation effective July 1, 2002 and revised April 15, 2010.



Kenneth J. Allen, MD, Health Officer



Donald Mason, Board of Health Chair

Taken, subscribed and sworn to before me
this 8th day of February, 2013



Vickie Earnest – Notary

My Commission Expires: 12/6/2021

AMENDED: 2/8/13

FILED: 2/14/13

