

MORGAN COUNTY HEALTH DEPARTMENT



CLEAN INDOOR AIR REGULATION

Public Smoking Regulations

Adopted by

The Morgan County Board of Health

06/19/03

Dr. Donald Strauss, Physician/ Director

Mr. Jim Slough, Chairman, Board of Health

Smoking Regulations adopted by Morgan County Board of Health in accordance with authority granted by West Virginia State Law Chapter 16-2-11. The Morgan County Board of Health voted at its 06/19/03 meeting to change the following Morgan County Clean Indoor Air Regulation to read as follows:

TITLE:

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

FINDINGS AND PURPOSE:

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke (a) is a cause of numerous diseases in healthy nonsmokers; (b) is a major contributor to indoor air pollution; and (c) is harmful to children, elderly people and individuals with cardiovascular and/or respiratory diseases.

Accordingly, the purpose of this regulation is to (1) protect the public health and welfare by prohibiting smoking in enclosed public places; (2) regulate smoking at the place of employment; and (3) 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.

DEFINITION:

The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

- A. "Free Standing Bar" for the purpose of this definition means an establishment that has 50% or greater of total sales in alcoholic beverages.
 - 1. It is a facility that is separated from a non-smoking area by location in a separate room by means of an impermeable physical barrier that completely encloses the bar area.
 - 2. It is served by a ventilation system that is separate from the ventilation system that serves smoke-free areas.
 - 3. The facility prohibits the entry of persons under the age of eighteen years of age.
- B. "Business" means any entity formed for profit-making purposes.
- C. "Dining Area" means any enclosed area containing a counter or tables upon which meals are served.
- D. "Employee" means any person employed for wages or anything of value, or any person who volunteers for a nonprofit entity.
- E. "Employer" means any entity which 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 on all sides by solid, impermeable walls or windows including all 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.
- G. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
- H. "Non-Profit Entity" means any entity whose operations are not committed to private financial gain. A public agency is not a "non-profit entity" within the meaning of this section.
- I. "Place of Employment" means any enclosed area where under the control of a public or private employer which employs normally frequent during the course of employment. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
- J. "Public Place" means any enclosed areas to which the public is invited or in which the public is permitted. A private residence is not considered a "public place."

- K. "Restaurant" means any establishment which is primarily devoted to the serving of food to the public, guests, patrons and employees as well as kitchens in which food is prepared.
- L. "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.
- M. "Sporting 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.
- N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette or other tobacco in any form. (* Amended July 1, 2011 – page 6)

REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES:

- A. Smoking shall be prohibited in all enclosed public places within Morgan County, including, but not limited to, the following places:
 - 1. All areas of grocery stores and convenience stores.
 - 2. Elevators
 - 3. Restrooms
 - 4. All means of public transit, including ticket, boarding and waiting areas
 - 5. All areas of retail stores
 - 6. All waiting areas and lobbies in all business and nonprofit entities
 - 7. Restaurants
 - 8. **All areas available to and customarily used by the public in all businesses and nonprofit entities patronized by the public, including but not limited to attorneys' offices and other offices, banks, hotels and motels.**
 - 9. All patient rooms, waiting rooms and other public areas in health facilities including but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctors and dentists offices.

10. Enclosed shopping malls.

11. Sporting arenas

12. Polling places

13. Bingo and fire halls

14. Child care centers

- B. Non-smoking areas shall be designed such that patrons would not be required to pass through smoking areas on a routine basis in order to patronize an establishment or to reach a non-smoking area. Therefore, **smoking shall not be permitted by persons standing within fifteen (15) feet of a public establishment.**
- C. Notwithstanding any other provision of this section, any person who controls any otherwise exempt establishment or facility described in this section may declare that entire establishment or facility as non-smoking.

REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT:

- A. It shall be the responsibility of employers to provide smoke-free areas for all employees.
- B. By the effective date of this article, each employer having an enclosed place of employment located within Morgan County SHALL POST a written no smoking policy which shall contain the following:

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, CAFETERIAS, EMPLOYEES LOUNGES, STAIRS, RESTROOMS, VEHICLES AND ALL OTHER ENCLOSED FACILITIES.

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. Free Standing Bars
 2. **Private residences, except when used as a child care or health care facility.**
 3. Hotel and motel rooms rented to guests but provision for non-smoking rooms is recommended.

- B. Notwithstanding any other provision of this Regulation, any person who controls any establishment described in this section may declare that entire establishment as a non-smoking facility.

POSTING OF SIGNS:

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signs.
- B. **"No Smoking"** signs shall be conspicuously posted in every building or other place where smoking is controlled by this Regulation, including but not limited to restrooms and elevators, by the owner, operator, manager or other person having control of such building or other place.
- C. Facilities that permit smoking must post signage (a) advising patrons of the second-hand smoke hazards and (b) that minors are prohibited.

ENFORCEMENT:

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Morgan County Health Department or its designee.
- B. Any owner, operator, manager or other person of any establishment regulated by this Regulation shall inform persons violating this Regulation of the appropriate provisions thereof.
- C. The owner, manager or operator of any establishment is ultimately responsible for adhering to this Regulation.

NON-RETALIATION:

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

VIOLATIONS AND PENALTIES:

- A. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Regulation.
- B. It shall be unlawful for any person who controls the use of any premises subject to regulation under this Regulation to fail to comply with any of its provisions.
- C. Any person who violates any provision of this Regulation shall be guilty of an infraction of chapter 16 of the West Virginia State Law. Penalty will be as set forth by Chapter 16-2-15 of the West Virginia State Law 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 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 shall be effective July 30, 2007 and will replace any previously enacted Regulations.

***AMENDMENT:**

The Morgan County Board of Health voted at its April 18, 2011 meeting to change the following Morgan County Clean Indoor Air Regulations to read as follows: (reference "DEFINITION" section letter "N" of this Clean Indoor Air Regulation)

- N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, or other **heated** tobacco in any form.

"Smoking" also includes the use of an e-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."

This Amendment shall become effective on July 1, 2011