

**Wheeling-Ohio County Clean Air Regulation**  
**Effective March 1, 2016**

**Section 1000. TITLE**

This Regulation shall be known as the Wheeling Ohio County Clean Air Regulation.

**Section 1001. AUTHORITY**

This Clean Air Regulation is adopted in accordance with the authority contained in West Virginia Code §16-2-11 et seq.

**Section 1002. FINDINGS AND PURPOSE**

The Wheeling-Ohio County Board of Health does hereby find:

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

The Environmental Protection Agency (EPA) has classified secondhand smoke as a Group A Carcinogen, known to cause cancer in humans. Accordingly, the Wheeling Ohio County Board of Health finds and declares that the purpose of this Regulation is to: (1) protect the public health and welfare by prohibiting smoking in enclosed public places and by regulating smoking in places of employment and (2) 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.

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

This regulation is formed in accordance to the Wheeling-Ohio Board of Health Mission Statement which says:

The mission of the Wheeling-Ohio County Health Department is to fulfill and promote society's public health interest by assuring conditions in which people can be healthy. To accomplish this mission, basic public health services will be delivered to every resident of the City of Wheeling and Ohio County, as resources allow. These basic public health

services include the provision of communicable and reportable disease services, community health promotion services, and environmental health services. The Wheeling-Ohio County Health Department is also committed to the ongoing core functions of public health; assessment of the community's health needs and resources, policy development to address the health needs of the community, and assurance that the health needs of the community will be met.

### **Section 1003. DEFINITIONS**

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

- A. "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. This includes but is not limited to auction houses and indoor flea markets.
- B. "ELECTRONIC SMOKING DEVICE" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- C. "EMPLOYEE" means any person employed by any employer in the consideration for direct and indirect monetary wages or profit (anything of value), and any person who volunteers his or her services for a nonprofit entity.
- D. "EMPLOYER" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- E. "ENCLOSED AREA" means all space between a floor and ceiling which is enclosed, that is bounded on at least three 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. "FREE STANDING LIMITED VIDEO LOTTERY ROOM" means a room that is devoted solely to the placement of limited video lottery machines licensed by the WV Lottery Commission. For the purposes of this regulation, it is a room that prohibits the entry of persons under the age of 21. A free standing video lottery room is an ENCLOSED AREA and does not allow the infiltration of secondhand smoke into any non-smoking area. For the purposes of this regulation a "free standing limited video lottery room" shall be separate from any areas that serve food and/or alcohol.
- G. "GAMING AND ENTERTAINMENT ESTABLISHMENT" refers to the Wheeling Island Hotel, Casino & Racetrack which is licensed by the West Virginia Racing Commission and West Virginia Lottery Commission and offers to the general

- public opportunities to place wagers on live or simulcast horse or dog races, participate in video lottery and table games.
- H. "GROCERY STORE" means any supermarket, convenience store, and other retail food production and marketing establishments.
  - I. "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.
  - J. "PLACE OF EMPLOYMENT" means any enclosed area under the control of a public or private employer whose employees normally frequent this area during the course of employment, including, but not limited to, work areas, employee lounges, and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.
  - K. "PRIVATE CLUB" means an entity falling within the definition of Private Club as set forth in Section 60-7-2 of the West Virginia Code, for purposes of State Control of Alcoholic Liquors. Private Club also means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.
  - L. "PUBLIC PLACE" means any enclosed areas 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, bars, private club, gaming facilities, service lines, outdoor public place, outdoor seating and waiting rooms. This shall include all rooms and offices of any agency that receives any monetary support from Ohio County.
  - M. "RESTAURANT" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, bars, free standing bars, 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.
  - N. "RETAIL STORE" means any establishment that sells goods or services directly to members of the general public including, but not limited to, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners, and Laundromats.
  - O. "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, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates a vapor, in any manner or in any form, or the use of any oral smoking device.

- P. "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.
- Q. "HEALTH CARE FACILITY" means an office or institution providing preventive health care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitation hospitals/centers, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions.
- R. "SERVICE LINE" means an outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- S. "OUTDOOR SEATING" means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead covering regardless of the number of walls or other side coverings.
- T. "OUTDOOR PUBLIC PLACE" Any outdoor public or private place open to the general public regardless of any fee or age requirement. Examples of outdoor public places include but are not limited to: playgrounds, amphitheaters, fair grounds, sports/athletic fields, amusement parks, swimming pools, concession stands, boweries, bleachers, plazas, cemeteries, public gardens, public parks, public squares, fairs and festivals, farmers and flea markets, outdoor eating areas, common areas, zoos, publicly owned walking/running trails and pathways and skate parks. Golf course practice greens, driving ranges and common areas around the clubhouse are considered outdoor public places and are subject to the smoking restriction. However, all other golf course areas including fairways and tee areas are exempt.

#### **Section 1004. REGULATION OF SMOKING IN PUBLIC PLACES**

- A. Smoking shall be prohibited in all public places within Ohio County, including, but not limited to the following places:
  - 1. Grocery Stores and Convenience Stores.
  - 2. Retail Stores.
  - 3. Elevators.
  - 4. Restrooms.
  - 5. All means of public transit, including buses, taxicabs, limousine, and other means of public transit. This also includes ticket, boarding, and waiting areas of public transit depots.
  - 6. All waiting areas and lobbies in all business and non-profit entities.
  - 7. Restaurants, including outdoor seating areas.
  - 8. Bars and private clubs
  - 9. Bingo Operations

10. 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 subdivision of the State during such time as a public meeting is in progress.
  11. All patient rooms, waiting rooms, and other public areas in health care facilities, including but not limited to hospitals, clinics, pharmacies, primary care facilities, physical therapy facilities, doctor's offices, dentist's offices, and optometrist's offices and all emergency medical services facilities.
  12. Enclosed shopping areas and malls.
  13. Bowling Alleys.
  14. Polling Places.
  15. Fire departments, rescue squads or other community buildings.
  16. Child Care and Adult Day Care Facilities.
  17. Public and Private school buildings and dormitories.
  18. Stairwells
  19. Lobbies, hallways, and other common areas in apartment buildings, condominiums, manufactured home communities, retirement facilities, nursing homes, emergency shelters, residential board and care establishments and other multiple-unit residential facilities.
  20. Private offices in places of employment
  21. All hotels and motels.
  22. Sporting arenas and the grandstands, locker rooms, restrooms, and vending areas, service lines and playing areas of outdoor stadiums and ballparks.
  23. Any facility, including amphitheaters, galleries, libraries and museums, 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.
- B. Smoking shall be prohibited in outdoor public places (as defined) within Ohio County including but not limited to:
1. Outdoor service lines, ticketing areas and boarding areas.
  2. Concourse areas of stadiums and outdoor seating of recreational venues.
  3. Outdoor seating and serving areas of restaurants.
  4. All outdoor property of healthcare facilities, including parking lots and sidewalks.
  5. Playgrounds
- C. 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, facility, or property as a nonsmoking establishment.

- D. In any dispute arising under this Regulation, the concerns of the non-smoker shall be given precedence.

#### **Section 1005. APPLICATION OF REGULATION TO PUBLICLY OWNED PROPERTY**

All property, including enclosed facilities, outdoor venues, buildings and vehicles owned by a governmental agency in Ohio County shall be smoke free and subject to the provisions of this regulation.

#### **Section 1006. REGULATION OF SMOKING IN ENCLOSED PLACE OF EMPLOYMENT**

- A. It shall be the responsibility of the employers to provide a smoke-free workplace for all employees.
- B. Within 30 days of the effective date of this article, each employer having an enclosed place of employment located within Ohio County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in 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, and all other enclosed facilities. Smoking shall be prohibited in vehicles owned or leased by the employer.

- 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.

#### **Section 1007. DISTANCE**

Smoking shall not be permitted at a distance of 20 feet or less outside any entrance, exit, or ventilation units of any area as defined in the regulation.

#### **Section 1008 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 apartments or housing units which are part of a multi-unit residential housing project or apartment building), except when used as a child care, adult daycare, health care facility or residences that are registered with the State of West Virginia as personal or residential board facility.
  - 2. Areas of Gaming and Entertainment Establishments that are devoted to the placement of video lottery machines and areas devoted to the placement of wagers on live or simulcast horse or dog races, their associated contiguous gambling facilities licensed by the West Virginia Lottery Commission and/or the West Virginia Racing Commission.

- 3. Free Standing Limited Video Lottery Rooms
- B. Notwithstanding any other provisions of this section, any person who controls any establishment described in this section may declare that establishment as a non-smoking facility.

#### **Section 1009. 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 restrooms and elevators, by the owner, operator, manager or other person having control of such building or other place.
- C. Posting notices for Outdoor Public Places shall be done through promotional literature, brochures, electronic media and other marketing material by the owner, operator, manager or other person having control of such facility.
- D. 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.
- E. Facilities that permit smoking must post signs advising patrons of secondhand smoke hazards, and that minors are prohibited in smoking areas. This posting shall be conspicuously placed. This advisory shall include, but is not limited to, the following:

**HEALTH WARNING  
SMOKING IS PERMITTED WITHIN THIS FACILITY, YOU WILL  
BE EXPOSED TO SECONDHAND SMOKE. SUCH EXPOSURE  
CAN CAUSE OR CONTRIBUTE TO CANCER, HEART  
DISEASE, RESPIRATORY ILLNESS, AND OTHER  
SERIOUS HEALTH PROBLEMS.**

#### **Section 1010. ENFORCEMENT**

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Wheeling Ohio County Health Department.
- 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.

#### **Section 1011. 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.

#### **Section 1012. 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 1013. SEVERABILITY**

If any portion of the Regulation or the application thereof shall be held to be invalid, the other provisions of the Regulation shall not be affected, and to this end the provisions of this Regulation are declared to be severable.

### **Section 1014. VIOLATIONS AND PENALTIES**

- A. Willful violation of this Clean Air Regulation is an unlawful act.  
Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:
1. 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
  2. Knowingly violate any other provision of this clean air regulation. Any person who smokes or possesses a burning cigarette, cigar, pipe tobacco or electronic smoking device 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 complaint under W.VA. 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 W.Va. 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:

#### ***Chapter 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 1115. PUBLIC EDUCATION**

The Wheeling-Ohio County Health Department shall engage in a continuing program to explain the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators, and managers in their compliance with the regulation. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

**EFFECTIVE DATE:**

This regulation effective July 22, 1996 was revised May 17, 2005 and November 10, 2015 and approved by the Wheeling-Ohio County Board of Health.

This regulation shall supersede previous Wheeling Ohio County Clean Indoor Air Regulations.

This regulation shall be effective March 1, 2016 (111) days from and after the date of its adoption or modification by the Wheeling-Ohio County Board of Health.

Wheeling-Ohio County Board of Health  
Clean Air Regulation  
Approved: November 10, 2015, effective March 1, 2016

Board of Health Members:  
Michael Caruso, Gloria Delbrugge, John Holloway, M.D.,  
Wilkes E. Kinney, Tom Tuttle, Cheryl Wonderly, Esq.

Health Officer:  
William C. Mercer, M.D.

Administrator:  
Howard P. Gamble, MPH