

Randolph County Clean Indoor Air Regulation

Randolph County Board of Health

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Title:

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

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AUTHORITY

Public Smoking Regulation adopted by a County Board of Health is in accordance with authority granted by West Virginia State Law, Chapter 16-2-11.

Findings and Purpose:

The United States Surgeon General and numerous other credible authorities and medical researchers have determined that involuntary inhalation of tobacco smoke is

- (a) a cause of numerous diseases in healthy nonsmokers;
- (b) is a major contributor to indoor air pollution: and
- (c) that children, elderly people, individuals with cardiovascular and/or respiratory disease are at special risk.
- (d) that the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate the exposure of nonsmokers to environmental tobacco smoke.

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Accordingly, the purpose of this Regulation is

- (1) to protect the public health and welfare by prohibiting smoking in enclosed public places except in designated smoking areas,
- (2) to regulate 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 tobacco-free air shall have priority

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

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A. "Attached Bar" means an area of a restaurant

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. "Electronic Cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

E. "Employee" means any person employed for direct and indirect monetary wages or anything of value, or any person who volunteers for a nonprofit entity.

F. "Employer" means any entity that employs the paid or volunteer services of one or more persons.

G. "Enclosure Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls and/or windows (exclusive of door 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.

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 "nonprofit entity" within the meaning of this section.

J. "Place of Employment" means any enclosed area under the control of a public or private employer which area employees normally frequent during the course of employment.

a. A private residence is not a "place of employment" unless it is used as a child care or health care facility.

K. "Public Place" means any enclosed areas to which the public is invited or in which the public is permitted. A private residence is not a "public place."

L. "Restaurant" means any establishment that serves food to the public, guests, patrons and employees, as well as the kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities and bars.

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. It is a facility that does not possess a food service permit.

O. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe plant or other smoking equipment in any manner or in any form.

P. "Proprietor" means any owner, operator, manager, or other person having control of a public place, including, but not limited to, buildings, businesses, establishments, stores, and facilities.

Q. "Public Transit" means any means of conveyance of travel available to members of public for a fee, including, but not limited to, taxi-cabs, buses, limousines, and chartered planes.

REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES

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A. Smoking shall be prohibited in enclosed public places within Randolph County, including, but not limited to, the following places:

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1. Grocery stores and Convenience stores
 2. Elevators
 3. Restrooms
 4. All means of public transit, i.e., taxi, bus, vans, including ticket boarding and waiting areas.
 5. Retail stores, except all areas within retail tobacco stores.
 6. All waiting areas and lobbies in all business and nonprofit entities.

7. Restaurants, including bars.
8. Every room, chamber, place of meeting or public assembly, indoor recreational facility, including school buildings under the control of any board, council, commission, committee including joint committees, or any political subdivision of the State during such time as a public meeting is in process.
9. All patient rooms, waiting rooms and other public areas in health facilities, including but not limited to hospitals, nursing homes, personal care homes, clinics, pharmacies, physical therapy facilities, doctor's offices and dentist's offices.
10. Enclosed shopping malls
11. Motel/Hotel/Bed & Breakfast, inns, rental cabins, and Bed and Breakfast inns.
12. Establishments where Bingo is played.
13. Bowling Alleys
14. Private schools
15. Polling places
16. Fire halls
17. Child Care and Adult day care facilities
18. Free Standing Limited Video Lottery Rooms

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B. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

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REGULATIONS OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT:

A. It shall be the responsibility of employers to provide a tobacco smoke-free workplace for all employees

B. Within 60 days of the effective date of this article, each employer having an enclosed place of employment located within Randolph County shall adopt, implement, make known and maintain a smoking policy which shall contain the following requirements:

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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.# #

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C. The smoking policy shall be communicated to all employees within 60 days of its adoption.

D. All employers shall supply a written copy of the smoking policy upon request to an existing or prospective employee.#

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REASONABLE DISTANCE

To insure tobacco smoke does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems, or by any other means, designated smoking areas shall be located at a reasonable distance of at least Fifteen (15) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where smoking is prohibited. Residents of nursing facilities are exempt from the fifteen (15) feet distance as long as smoke cannot enter the facility as expressed above.

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WHERE SMOKING IS NOT REGULATED

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D ~~##~~ Notwithstanding any other provisions of this Regulation to the contrary, the following areas shall not be subject to the smoking restrictions of this regulation#

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1. Private residences, except when used as a child care or health care facility.
2. Residents, prior to September 4, 2003, of personal care home, who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
7. Outdoor places of employment

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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 nonsmoking facility.

POSTING OF SIGNS#

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A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signs.

B. "Smoking" or "No Smoking" signs, whichever are appropriate, shall be conspicuously posted at the entry way 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. 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.

D. Facilities, where smoking is not regulated by this policy, that permit smoking, must post signs advising patrons of secondhand smoke hazards.

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Smoking is permitted within this facility and you will be exposed to secondhand smoke. Such exposure can cause or contribute to cancer, heart disease, respiratory illness, and other serious health problems"

ENFORCEMENT

A. Although smoking regulations are primarily self-regulating through public pressure, enforcement of this regulation shall be the ultimate responsibility of the Health Officer of the Randolph County Health Department or his or her lawful designee.

B. Any owner, operator, proprietor, manager, or other person of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.

NON RETALIATION:

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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

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This Regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws, ordinances or regulations #

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SEVERABILITY:

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If any portion of this Regulation of 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.

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A. Willful violation of this clean indoor 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 premise subject to their control in an area where smoking is prohibited by the provisions of this clean indoor air regulation, or

b. Knowingly violate any other provision of this clean indoor air regulation

2. Any person who smokes or possesses a burning or heated cigarette, cigar or pipe tobacco 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 indoor air regulation.

B. The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under WV Code 16-2-15 against any person who willfully violates this clean indoor regulation. Enforcement through civil process includes, but is not limited to, a petition for injunctive relief. Any person who willfully violates this clean indoor 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 indoor air regulation, West Virginia Code 16-2-15 provided as follows: "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 provision, 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 the state for violations of provisions of this article".

C. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Regulation.

D. 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.

E. Managers, proprietors, or owners charged with implementing such policies shall be immune from complaints resulting from good faith efforts to implement and enforce the above mandated policies.

EFFECTIVE DATE##

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This Regulation shall be effective on July 31, 2015 or sixty (60) days from and after the date of its adoption.

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REPEAL AND REPLACEMENT OF FORMER REGULATION

This regulation repeals and replaces the Randolph County Clean Air Regulation adopted on December 21, 1994 and effective on April 1, 1995; and amended on July 1, 1995 and amended in 2007, amended on July 1, 2012, and amended on 7-31-2015.

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