

# **A REGULATION ELIMINATING SMOKING IN WORK PLACES AND PUBLIC PLACES**

## **Section 100. TITLE**

This Regulation shall be known as the **UPSHUR COUNTY CLEAN INDOOR AIR REGULATION.**

## **Section 101. Authority**

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

## **Section 102. Findings and Purpose**

The United States Surgeon General and numerous other credible authorities and medical researchers have determined:

(A) That involuntary inhalation of secondhand or environmental tobacco smoke can cause or contribute to numerous serious health problems and diseases, including heart disease, cancer, respiratory illness, and acute episodes of decreased respiratory function, including bronchoconstriction and broncho-spasm in healthy nonsmokers.

(B) That the presence of secondary tobacco smoke is a major contributor to indoor air pollution.

(C) That children, elderly people and individuals with cardiovascular and/or respiratory diseases are at increased 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. Smoking bans remain the most viable and cost-effective method of protecting patrons. The Environmental Protection Agency (EPA) has classified secondhand smoke as a Group a Carcinogen, known to cause cancer in humans.

(E) **Unregulated high – tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufactures, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco - specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture these products are inconsistent or non – existent.” [n.a.], “Summary of results: laboratory analysis of electronic cigarettes conducted by FDA, Food and Drug Administration (FDA), July 22, 2009.**

<http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009. E – cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

Accordingly, the Upshur County Board of Health finds and declares the purpose of this regulation is to:

(A) Protect the health of the public by prohibiting exposure of individuals to a proven harmful environmental toxin, i.e. secondhand smoke, in public places and places of employment.

(B) Direct the proprietors of public places of indoor commerce to provide a smoke-free environment to minimize public exposure to this harmful toxin.

### **Section 103. Definitions**

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

- A. "Business" means any entity formed for profit-making purposes.
- B. "Dining Area" means any area containing a counter or table upon which meals are served.
- C. "Employee" means any person employed for direct and indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- D. "Employer" means any entity that employs the paid or volunteer services of one or more persons.
- E. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
- F. "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.
- G. "Place of Employment" means any area under the control of a public or private employer whose employees normally frequent during the course of employment. A private residence is not a "place of employment" unless it is used as a childcare or health care facility.
- H. "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.
- I. "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".
- J. "Public Transit" means any means of conveyance or travel available to members of public for a fee, including, but not limited to, taxi-cabs, buses, limousines and chartered planes.
- K. "Restaurant" means any establishment including bars that serves food to the public, guests, patrons and employees as well as kitchens in which food is prepared on the premises for serving elsewhere including catering facilities.
- L. "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.

M. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, plant or other smoking equipment in any manner or in any form. "Smoking" also includes the use of any electronic smoking device which creates a vapor, in any manner or in any form, or use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.

N. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such a service involves the exchange of money.

O. "Enclosed Area" means all space between a floor and ceiling which is enclosed in all sides by solid walls or windows including doors or passage ways. The "enclosed" area extends from the floor to the ceiling, including all spaces therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping or similar structures."

P. "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.

### **Section 104. Application of Regulation to Publicly Owned Facilities**

All enclosed facilities including buildings and vehicles owned and occupied by Upshur County, or any municipality located in Upshur County, shall be subject to the provisions of this regulation.

### **Section 105. Regulations of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed public places within Upshur County, including, but not limited to the following places:

1. Grocery stores and Convenience stores.
2. Service lines, restrooms, lobbies, elevators, enclosed stairwells and parking garages, reception areas, hallways and any other common-use areas.
3. All means of public transit, including ticket, boarding and waiting areas.
4. All waiting areas and lobbies in all business and non-profit entities.
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 during such time as a public meeting is in progress.
7. 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.
8. Enclosed shopping malls
9. Bowling alleys.
10. Private schools.
11. Polling places.
12. Fire halls.
13. Childcare and Adult day care facilities.
14. Retail stores.

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

### **Section 106. Regulations of Smoking in Enclosed Place of Employment**

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

B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within Upshur 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, unless exempted. 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 (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 107. Reasonable Distance**

To ensure 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 outside any entrance, exit, operable window or ventilation intake for any building or other facility where smoking is prohibited, if such a space is subject to the control of the proprietor, owner, operator or manager for the building or other area where smoking is prohibited.

### **Section 108. Where Smoking is not regulated**

A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall not be subject to the smoking restrictions of this regulation:

1. Private residences, except when used as a childcare or health care facility.
2. Outdoor places of employment.
3. Designated Hotel and Motel rooms rented to guests.
4. The conference or meeting rooms or public and private assembly rooms of hotels, motels and fraternal organizations while these places are being used for private functions.
5. **Bingo Halls that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.**
6. **Residents, prior to September 4, 2003, of personal care homes, 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. Retail tobacco stores, which do not possess a food service permit.

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 109. Posting Of Signs**

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

B. "No Smoking" 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) signs shall be conspicuously posted on all entrances of 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. 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 that permit smoking must conspicuously post on all entrances signs advising patrons of secondhand smoke hazards, and that minors are prohibited in smoking areas.

#### **"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 110. 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 Upshur 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 provision thereof.

### **Section 111. 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 112. 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 113. Severability**

If any portion of the regulation or the application thereof shall be held 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 114. Violations and Penalties**

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 premises 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 a burning cigarette, cigar or pipe tobacco or electronic cigarette 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. 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 indoor air regulation.

Enforcement through civil process, includes, but 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:

§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 115. Adopted Date**

This regulation adopted on April 15, 2014

## **Section 116. Effective Date**

This regulation shall be effective July 14, 2014

**Section 117. Repeal and Replacement of Former Regulation**

This regulation repeals and replaces the Upshur County West Virginia Indoor Clean Air Regulation adopted October 4, 1995, effective January 4, 1996.