

Berkeley County Health Department CLEAN INDOOR AIR REGULATION

Public Smoking Regulation Adopted by the Berkeley County Board of Health
Smoking Regulations adopted by Berkeley County Board of Health in accordance with authority granted by West Virginia State Law Chapter 16211.
The Berkeley County Board of Health voted at it's
May 17, 2010, meeting to invoke the following revision to the Berkeley County Clean Indoor Air Regulation.

TITLE:

This Regulation shall be known as the **Berkeley 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, 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 except in designated smoking areas; (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 or by means of impermeable physical barriers that completely enclose the bar area, And (2) is served by a ventilation system that is separate from the ventilation system that serves smokefree areas, And (3) prohibits the entry of persons under the age of eighteen.
- B. "Business" means any entity formed for profitmaking 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 direct and indirect monetary wages or anything of value, or any person who volunteers for a nonprofit entity.
- E. "Employer" means any entity who 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. "NonProfit 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.

I. "Place of Employment" means any enclosed 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 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 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.

O. "Retail tobacco store" means a retail establishment that derives more than eighty percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food or restaurant license.

1) It is a facility that is located in a structure or portion of a structure occupied solely by the business and smoke from the retail tobacco business does not migrate into an enclosed area where smoking is prohibited. And (2) is served by a ventilation system that is separate from the ventilation system that serves smoke free areas, and (3) prohibits the entry of persons under the age of eighteen.

REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES:

A. Smoking shall be prohibited in all enclosed public places within Berkeley 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 (excluding retail tobacco 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, doctor and dentist offices.
 10. Enclosed shopping malls.
 11. Sporting arenas
 12. Polling Places
 13. Bingo and Fire halls
 14. Child Care Centers
- B. Nonsmoking 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 nonsmoking area.
- C. Notwithstanding any other provision of this section, any person who controls any establishment or facility described in this section may declare that entire establishment or facility as nonsmoking.
- D. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT

- A. It shall be the responsibility of employers to provide smokefree areas for all employees.
- B. Within 60 days of the effective date of the article, each employer having an enclosed place of employment located within Berkeley County shall POST a written no smoking policy and 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.

REASONABLE DISTANCE

Designated smoking areas shall not occur within 20 feet of an entrance or intake to a ventilation system serving a non smoking facility.

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.
 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. Retail 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 nonsmoking facility.

POSTING OF SIGNS

A. Because rules regulating smoking are primarily selfenforcing, 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. Facilities that permit smoking must post(a) signage advising patrons of second hand smoke hazards and (b) minors prohibited

ENFORCEMENT

A. Although smoking regulations are primarily selfregulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Berkeley 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, operator of any establishment is ultimately responsible for the requirements of this regulation and may inform persons violating this article of the appropriate provisions thereof and while an establishment is undergoing an inspection provide the health department or his or her designee a written certification that all requirements of this article have been complied with.

NONRETALIATION

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 severable.

VIOLATIONS AND PENALTIES

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 Laws.

Penalty will be as set forth by Chapter 16215 of the The West Virginia State Laws which states: §16215.

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

Effective 05/17/2010 (BERKELEY COUNTY BOARD OF HEALTH)

_____, Physician/Director

_____, Chairman, Board of Health