

**KANAWHA-CHARLESTON BOARD OF HEALTH****CLEAN INDOOR AIR REGULATION**

Kanawha-Charleston Health Department  
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Approved May 22, 1995

**TITLE:**

This regulation shall be known as the Kanawha-Charleston Clean Indoor Air Regulation.

**AUTHORITY:**

This Clean Indoor Air Regulation is adopted by the Kanawha-Charleston Board of Health in accordance with the authority contained in West Virginia Code, Chapter 16-2A-3.

**FINDINGS AND PURPOSE:**

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

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 in 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. Smokers CAN refrain from smoking, but non-smokers CANNOT refrain from BREATHING.

**DEFINITIONS:**

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

- A. "Bar" means an area which is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.
- 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 direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit 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 walls 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 or are not solid "office landscaping" or similar structures.

- G. "Grocery Store" means any supermarket, convenience store, or other retail food production and marketing establishment.
- 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 which 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 area 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 the kitchens in which their 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, 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. "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.
- N. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other smoking equipment in any manner or in any form.

#### **REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES**

- A. Smoking shall be prohibited in all enclosed public places within Kanawha County, including, but not limited to the following places:
  1. Grocery stores
  2. Elevators
  3. Restrooms
  4. All means of public transit, including ticket, boarding, transport and waiting areas.
  5. Retail stores, except areas in said stores not open to the public, and all areas within retail tobacco stores.
  6. All waiting areas and lobbies in all business and non-profit entities.
  7. Restaurants, except that they may designate a contiguous area up to fifty percent (50%) of the seating capacity as a smoking area.
  8. 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 or business is in progress.
  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' offices and dentists' offices.
  10. Enclosed shopping malls, unless the majority vote by the businesses can agree to designate smoking areas within the common areas. These designated areas shall contain not more than fifty percent (50%) of the seating within the common area and thirty percent (30%) of the seating in the food court. Ventilation **MUST** be adequate to remove the smoke from the breathing zone of non-smokers.

- B. Non-smoking areas shall be designated 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.
- C. Notwithstanding any other provision of this section, any person who controls any establishment or facility described in this section may declare the internal areas of that entire establishment or facility as non-smoking.
- D. In any dispute arising under this Regulation, the health concerns of the non-smoker shall be given precedence.

#### **REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT**

- A. It shall be the responsibility of employers to provide smoke-free areas for non-smoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.
- B. Non-smoking areas shall be designated such that an employee would not be required to pass through smoking areas on a routine basis in order to perform job duties or to reach a non-smoking area.
- C. Each employer shall adopt, implement, make known and maintain a smoking policy which recognizes 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. The policy shall include at a minimum the following requirements:
  - 1. Any employee in a place of employment shall have the right to designate his or her work area as a non-smoking area and to post the same with appropriate signs.
  - 2. In any dispute arising under the smoking policy, the health concerns of the non-smoker shall be given precedence.
- D. The smoking policy shall be shared with any existing or prospective employee who requests it.
- E. Notwithstanding any other provision of this section, every employers shall have the right to designate any place of employment, or any portion thereof, as a non-smoking area.

#### **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. Bars
- 2. Private residences, except when used as a child care or health care facility.
- 3. Designated Hotel and Motel rooms rented to guests.
- 4. Retail tobacco stores.
- 5. 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 - Not Open To The General Public.
- 6. A private enclosed office work place occupied by only one person or occupied exclusively by smokers, even though such an office work place may be visited by non-smokers. However, any employee has the right to designate his/her work area as non-smoking, and smoking shall be prohibited in all public waiting areas and lobbies.

- B. Notwithstanding any other provision of this section, any person who controls any establishment described in this section may declare the internal areas of 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. "Smoking" or "No Smoking" signs, whichever are appropriate, shall be conspicuously posted by the owner, operator, manager or other person having control of such building or other place where smoking is controlled by this regulation, including restrooms and elevators.

### **ENFORCEMENT**

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Kanawha-Charleston Board of Health.
- 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.

### **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 severable.

### **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 provisions of this Regulation shall be guilty of an infraction.
- D. Penalties for violations of Health Department Regulations are provided for in West Virginia Code, Chapter 16-2A-10.

"Any person willfully violating any of the provisions of this article, for which a penalty is not otherwise provided, or any of the rules, regulations or orders adopted or issued pursuant thereto, shall be guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days or both."

**EFFECTIVE DATE**

This Regulation shall be effective sixty (60) days from and after the date of its adoption.