

# Mid Ohio Valley Health Department CLEAN INDOOR AIR REGULATION

## TITLE

This Regulation shall be known as the Mid-Ohio Valley Health Department Clean Indoor Air Regulation covering the counties of Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood.

## FINDINGS and PURPOSE

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 Mid Ohio Valley 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.

## DEFINITIONS

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

A. "Bar" means any establishment that 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. A "bar" for the purposes of this definition has fifty percent (50%) or greater of total sales in alcoholic beverages and does not ever allow entry of customers under the age of 18 years. A "bar" for the purpose of this definition does not include any establishment where tobacco smoke can filter into any area where smoking is prohibited, through a passageway, ventilation system, or any other means.

B. "Business" means any entity formed for profit-making purposes.

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 including a municipal corporation, or non-profit entity that employs the paid or volunteer services of one or more persons.

E. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by walls or windows including doors or passage ways. The "enclosed" area extends from the floor to the ceiling.

F. "Fraternal Organization" is a private club that allows entry for dues paying members and their guests. Fraternal Organizations for the purpose of this regulation will follow the guidelines of a bar/restaurant.

F. "Free Standing Video Lottery Room" means a room that is devoted to the placement of video lottery machines licensed by the WV Gaming Commission. It has solid walls or windows, enclosed on all sides and is served by a separate ventilation system that does not allow for the infiltration of secondhand smoke into any non smoking area.

G. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.

H. "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.

I. "Enclosed 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."

J. "Restaurant" means any establishment 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.

K. "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.

L. "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.

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.

N. "Separate Ventilation" means ventilation equipment sized and installed to produce sufficient negative air pressure to effectively move air from the smoking area to the outside as proven by a "smoke test".

P. "Smoke Test" is the visual detection of the movement of a column of smoke produced anywhere within the smoking area to the outside environment.

## **APPLICATION OF ARTICLE TO COUNTY-OWNED FACILITIES**

All enclosed facilities including buildings and vehicles owned by the counties or municipalities covered in this regulation or any agency that receives any monetary support from the counties or municipalities covered in this regulation shall be subject to the provisions of this article.

## REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES

Smoking shall be prohibited in all enclosed public places within Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties, including, but not limited to the following places:

Grocery Stores and Convenience Stores

Retail Stores

Elevators

Stairwells

Restrooms

All means of public transit, including ticket, boarding and waiting areas

All waiting areas and lobbies in all business and non-profit entities

Restaurants, except that they may designate a contiguous area up to twenty-five percent (25%) of the seating capacity of the restaurant as a "smoking area",

Such areas shall be enclosed floor to ceiling with separate ventilation between smoking and no smoking areas, and automatic closing doors which must remain closed except during entrance and egress. **NOTE: As of 10/1/2008, no "smoking areas" will be allowed in restaurants and all such establishments in the six counties covered by the Mid-Ohio Valley Health Department will be 100% smoke free.**

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

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, doctors' offices, dentists' offices, and optometrists' offices

Enclosed shopping malls

Bowling Alleys, unless a portion of the bowling alley falls under the exemption allowed a restaurant.

Polling Places

All Fire Department Facilities

Child Care and Adult Day Care Facilities

Private Schools

Galleries, libraries and museums

Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or similar performance

Auction Houses

Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

Private offices in places of employment

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 non-smoking.

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

## **REGULATIONS 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 90 days of the effective date of this article, each employer having an enclosed place of employment located within Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties shall adopt, implement, make known and maintain a written smoking policy.

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.

E. Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a no smoking area.

## **REASONABLE DISTANCE**

Designated smoking areas shall occur at a reasonable distance of 15 feet or more outside any entrance, exit, or ventilation units of any buildings or enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.

## **EXEMPTION TO SMOKE-FREE REGULATIONS**

Restaurants which permit smoking shall provide a floor to ceiling enclosed area with separate ventilation between smoking and no smoking areas, and automatic closing doors. The minimum fresh air exchange rate shall be no less than twelve (12) times per hour. Tobacco smoke may not filter into any area where smoking is prohibited, through a passageway, ventilation system, or any other means. The decision to build a "smoking room" must be communicated to the Mid Ohio Valley Health Department Environmental Health Services Department before implementation. The separately ventilated area must pass a "smoke test" before put into use and must be verified in writing by a licensed HVAC installer and such documentation provided to the MOVHD.

**NOTE: As of 10/1/2008, no smoking areas will be allowed in restaurants and all such establishments in the six counties covered by the Mid-Ohio Valley Health Department will be 100% smoke free.**

## **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", **until 10/1/2008**.
  2. "Free Standing Video Lottery Rooms", **until 10/1/2008**.
  3. Private residences, except when used as a child care or health care facility.
  4. Designated Hotel and Motel rooms rented to guests.
  5. Bingo Halls
  6. Retail tobacco stores which do not possess a food service permit.
  7. 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.
- 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.
- C. Newly constructed establishments or those acquired by a change of ownership, going into business after the effective date of this regulation shall be smoke-free facilities.
- D. As of **10/1/2008**, "bars", "restaurants" and "free-standing video lottery rooms" will also be 100% smoke-free and will be subject to the smoking restrictions of this Regulation.

## **POSTING OF SIGNS**

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signs.
- B. The owner, operator, manager or other person having control of a building or other place covered by this Regulation shall post conspicuous "No Smoking" signs in every place
- C. Every establishment where smoking is controlled by this regulation shall have posted at each entrance a conspicuous sign stating that smoking is prohibited.
- D. Facilities that permit smoking must post signs at every smoking area entrance that read:

**Health Warning**  
**Smoking is permitted within this area,**  
**You will be exposed to secondhand smoke.**  
**Such exposure can cause or contribute to**  
**cancer, heart disease, respiratory illness, and**  
**other serious health problems.**  
**No one under the age of 18 is permitted.**

The lettering of such signage must be bold and at least one (1) inch in height and one-quarter (1/4) of an inch in width with the heading at least two (2) inches in height and three-eighths (3/8) of an inch in width.

- E. 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.

## **ENFORCEMENT**

- A. Enforcement of this article shall be implemented by the Mid-Ohio Valley Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the Counties of Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Mid-Ohio Valley Health Department.
- D. The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.
- E. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article 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. An employee must be 18 to work in a designated smoking area.

## **VIOLATIONS AND PENALTIES**

- A. Willful violation of this Clean Indoor 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 indoor air regulation, or
  - (2) Knowingly violate any other provision of this clean indoor 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 indoor air 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 W.Va. 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.

**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.

**Public Education**

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

**OTHER APPLICABLE LAWS**

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable federal, state, or local law or ordinance.

**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.

**Effective Date**

This regulation shall become effective 10/1/2005.

Adopted by the Mid-Ohio Valley Board of Health  
July 26, 2005