

**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 and other authoritative public health authorities have determined that involuntary inhalation of tobacco smoke (a) is a cause of numerous diseases in healthy non-smokers; (b) is a major contributor to indoor air pollution; (c) places children, unborn children of pregnant women, elderly people, and individuals with cardiovascular and/or respiratory disease at special risk; (d) is a trigger for acute episodes of respiratory distress and myocardial infarction; (e) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers; (f) burdens the health care system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing the public and private expenditures required for the treatment; (g) reduces the life expectancy of persons consistently exposed to secondary smoke and (h) causes substantial losses in productivity through smoking related absences from work and school.

Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.... "In attempting to minimize the effects of tobacco smoke on the general public in 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....."

Accordingly, the purposes of this Regulation are:

1. to protect the public health and welfare by prohibiting smoking in public places,
2. to prohibit 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 smoke-free air shall have priority,
4. to facilitate smoking cessation by active smokers and
5. to discourage non-smokers from taking up the habit and thereby developing a nicotine addiction.

## 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.
- B. “Business” means any entity formed for profit-making purposes.
- C. “E-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.
- D. “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.
- E. “Employer” means any entity including a municipal corporation, or non-profit entity that employs the paid or volunteer services of one or more persons.
- F. “Enclosed Area” is defined as any area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on more than two sides.
- G. “Fraternal Organization” is a private club that allows entry for dues-paying members and their guests.
- H. “Free Standing Video Lottery Room” means a room that is devoted to the placement of video lottery machines licensed by the WV Gaming Commission.
- I. “Grocery Store” means any supermarket, convenience store, and other retail food production and marketing establishments.
- J. “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.
- K. “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.”
- L. “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.

M. "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.

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, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.

### **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 with Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties, including, but not limited to the following places:

Grocery Stores and Convenience Stores

Retail Stores

Bars

Restaurants

Video Lottery Rooms

Retail Tobacco Stores

Fraternal Organizations

Elevators

Stairwells

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

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

Restaurants

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

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. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- C. 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 from any entrance, exit, window, or ventilation unit of any building 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 areas for the heating, ventilation, and air-conditioning (HVAC) systems of any building.

## **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. Private residences, except when used as a child care or health care facility.
2. 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 West Virginia Supreme Court of Appeals, December 2, 2003.

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.  
**WHERE SMOKING WILL BE REGULATED AFTER 5/1/2014**

1. Designated Hotel and Motel rooms rented to guests shall be subject to the restrictions of this regulation on **5/1/2014**.

2. The conference or meeting rooms or public and private assembly rooms of hotels and motels while these places are being used for private functions shall be subject to the restrictions of this regulation on **5/1/2014**.

3. The conference or meeting rooms or public and private assembly rooms of fraternal organizations while these places are being used for private functions shall be subject to the restrictions of this regulation on **5/1/2014**.

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.

## **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. 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 and at other times, 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. Violation of this Clean Indoor Air Regulation is an unlawful act. Any person who owns, manages, operates or otherwise uses a premise shall commit a violation if they:

- (1) 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) Violate any provisions 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 violates this clean indoor air regulation.

Enforcement through civil process includes, but is not limited to, a petition for injunctive relief.

Any person who violates this clean indoor air regulation may be charged with a misdemeanor under W.VA. Code 16-2-15 and, upon evidence, 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.

Because supporting the WV Legislature's goal of a tobacco free populace is also part of the mission of the Mid-Ohio Valley Health Department (MOVHD) and its Board of Health, MOVHD will assist all those who want to quit with cessation classes, access to the Quit Line, and other aids in their journey towards breaking their addiction to tobacco.

### **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 article shall become effective March 26, 2013.

Adopted by the Mid-Ohio Valley Board of Health  
July 26, 2005  
Modified November 24, 2009  
Modified May 24, 2011  
Modified March 26, 2013