

**WHEELING OHIO COUNTY  
CLEAN INDOOR AIR REGULATION**

**Section 1000. TITLE**

This Regulation shall be known as the Wheeling Ohio County Clean Indoor Air Regulation of 2005.

**Section 1001. Authority**

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

**Section 1002. FINDINGS and PURPOSE**

The Wheeling-Ohio County Board of Health does hereby find:

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 Wheeling Ohio County 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.

This regulation is formed in accordance to the Wheeling-Ohio Board of Health Mission Statement which says:

The mission of the Wheeling-Ohio County Health Department is to fulfill and promote society's public health interest by assuring conditions in which people can be healthy. To accomplish this mission, basic public health services will be delivered to every resident of the City of Wheeling and Ohio County, as resources allow. These basic public health services include the provision of communicable and reportable disease services, community health promotion services, and environmental health services. The Wheeling-Ohio County Health Department is also committed to the ongoing core functions of public health; assessment of the community's health needs and resources, policy development to address the health needs of the community, and assurance that the health needs of the community will be met.

### **Section 1003. DEFINITIONS**

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

- A. “BUSINESS” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- B. “EMPLOYEE” means any person employed by any employer in the consideration for direct and indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.
- C. “EMPLOYER” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- D. “ENCLOSED AREA” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows or doorways, 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.
- E. “FREE STANDING LIMITED VIDEO LOTTERY ROOM” means a room that is devoted solely to the placement of limited video lottery machines licensed by the WV Lottery Commission. For the purposes of this regulation, it is a room that prohibits the entry of persons under the age of 21. A free standing video lottery room is an ENCLOSED AREA and does not allow the infiltration of secondhand smoke into any non smoking area. For the purposes of this regulation a “free standing limited video lottery room” shall be separate from any areas that serve food and/or alcohol.
- F. “GAMING AND ENTERTAINMENT ESTABLISHMENT” means (1) a facility that is licensed as a racetrack by the State of West Virginia and offers the general public opportunities to place wagers on live or simulcast horse or dog races and participate in West Virginia video lottery for entertainment purposes, as well as, participate in other entertainment activities that are secondary to the racing and gaming activities; and (2) any facility, including, but not limited to, a hotel, comprising or adjoining a facility described in (1) hereof.
- G. “GROCERY STORE” means any supermarket, convenience store, and other retail food production and marketing establishments.
- 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 under the control of a public or private employer whose employees normally frequent this area during the course of employment, including, but not limited to, work areas, employee lounges, and restrooms, conference and classrooms, employee cafeterias, and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day 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, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, and waiting rooms. This shall include all rooms and offices of any agency that receives any monetary support from Ohio County.
- K. “RESTAURANT” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, bars, and any other eating establishment which gives or offers for sale food to the public, guests, or 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. “RETAIL TOBACCO STORE” means any enclosed indoor workplace dedicated to or predominately for the retail sale of tobacco, tobacco products, and accessories for such products, in which the sale of other products or services is merely incidental. Any enclosed indoor workplace of a business that manufactures, imports, or distributes tobacco products or of a tobacco leaf dealer is a business dedicated to or predominantly for the retail sale of tobacco and tobacco products when, as a necessary and integral part of the process of making, manufacturing, importing, or distributing a tobacco product for the eventual retail sale of such tobacco or tobacco product, tobacco is heated, burned, or smoked or a lighted tobacco product is tested. It is a facility that does not possess a food service permit.
- N. “SMOKING” means inhaling, exhaling, burning or carrying any lighted cigar, burning cigarette, lighted pipe, plant or other smoking equipment containing burning tobacco in any manner or in any form.
- O. “SPORTS 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.
- P. “PRIVATE FUNCTION” means a function in which no fee is charged and no tickets are sold, and no public announcements are made to the event and/or function.

#### **Section 1004. REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES**

- A. Smoking shall be prohibited in all enclosed public places within Ohio County, including, but not limited to the following places:
  - 1. Grocery Stores and Convenience Stores.
  - 2. Retail Stores.
  - 3. Elevators.
  - 4. Restrooms.

5. All means of public transit, including ticket, boarding and waiting areas.
  6. All waiting areas and lobbies in all business and non-profit entities.
  7. Restaurants.
  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 subdivision of the State during such time as a public meeting is in progress.
  9. 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.
  10. Enclosed shopping malls.
  11. Bowling Alleys.
  12. Polling Places.
  13. Fire Halls.
  14. Child Care and Adult Day Care Facilities.
  15. Private Schools.
  16. Areas located within Gaming and Entertainment Establishments that are not primarily dedicated to gaming activity such as: restaurants, restrooms, private offices, employee lounges, break rooms, and hallways.
- B. In any dispute arising under this Regulation, the concerns of the non-smoker shall be given precedence.

**Section 1005. REGULATION 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 30 days of the effective date of this article, each employer having an enclosed place of employment located within Ohio County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:
- Smoking shall be prohibited in enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. Smoking shall be prohibited in vehicles owned or leased by the employer.
- 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 1006. 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 Limited Video Lottery Rooms.
  2. Private residences, except when used as a child care or health care facility.
  3. Designated Hotel and Motel rooms rented to guests.
  4. Bingo operations that distribute more than one hundred bingo cards or bingo sheets allowed under WV Code Section § 47-20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
  5. Retail tobacco stores, which do not possess a food service permit.
  6. Conference or meeting rooms or public and private assembly rooms of facilities that are being used for private functions.
  7. Areas of Gaming and Entertainment Establishments that are devoted to the placement of video lottery machines and areas devoted to the placement of wagers on live or simulcast horse or dog races, their associated contiguous gambling facilities licensed by the West Virginia Lottery Commission and/or the West Virginia Racing Commission.
  8. Residents of Personal Care Homes, existing prior to September 4, 2003, which under 64 WV CSR §14-8.12.3, may not terminate smoking privileges of Pre-September 4, 2003, residents who smoke, but shall have non-smoking areas and adopt no-smoking policies as defined by residential operations administrators, subject to said grandfathered provision as stipulated by the WV State Supreme Court of Appeals, December 2, 2003. Such an area shall not serve as an employee break room and will be limited to residents within the facility use only.
- 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 1007. POSTING OF SIGNS**

- A. Because rules regulating smoking are primarily self-enforcing, 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. 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 post signs advising patrons of secondhand smoke hazards, and that minors are prohibited in smoking areas. This posting

shall be conspicuously placed. This advisory shall include, but is not limited to, the following:

**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 1008. ENFORCEMENT**

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the ultimate responsibility of the Wheeling Ohio County Health Department.
- 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.

**Section 1009. 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 1010. 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 1011. SEVERABILITY**

If any portion of the Regulation or the application thereof shall be held to be 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 1012. 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. Any person who smokes or possesses a burning cigarette, cigar or pipe tobacco 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 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.

**Section 1013. PUBLIC EDUCATION**

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

**EFFECTIVE DATE: May 27, 2005**

Wheeling-Ohio County Board of Health  
Clean Indoor Air Regulation  
Approved by Unanimous Vote: May 17, 2005

**Wheeling-Ohio County Board of Health Members**

John Holloway, M.D., Chairperson  
Brent Bush, J.D.  
Christine Carder  
James Swann  
Deborah Wilcox

William C. Mercer, M.D., Health Officer/Secretary  
Howard P. Gamble, MPH, Administrator, WOCHD

May 2008