

**WAYNE COUNTY CLEAN INDOOR AIR REGULATION
2005-001**

[Adopted March 17, 2005]

An amendment to the Wayne County Environmental Health Regulation to add Article X entitled Wayne County Clean Indoor Air Regulation, a public health regulation to address the harmful environmental health impacts of secondhand smoke in public and private work sites and public places, and to provide penalties for violations of these prohibitions.

Article X. Wayne County Clean Indoor Air Regulation.

Section 1001. Title

This article shall be known as the Wayne County Clean Indoor Air Regulation.

Section 1002. Authority

This regulation is hereby adopted pursuant to authority conferred upon the County of Wayne by the Michigan Public Health Code, 1978 P.A. 368, as amended.

Section 1003. Jurisdiction and Administration

- A. The health officer shall have responsibility for administering and enforcing this regulation, including all amendments hereafter adopted unless otherwise specifically stated.
- B. Pursuant to MCL 333.2441(1), this regulation shall supersede inconsistent or conflicting local ordinances for communities that are subject to this regulation.

Section 1004. Purpose

- A. Wayne County hereby finds and declares that:
 - 1. The U.S. Surgeon General, National Research Council, and National Academy of Sciences, report that secondhand smoke causes lung cancer in healthy adult nonsmokers, and can cause lung function and structure alteration to the fetus of pregnant nonsmoking women. Additionally, in utero exposure is known to predispose children to long-term pulmonary risks. Further, these agencies found that separating smokers and nonsmokers within the same air space may reduce but does not eliminate a nonsmoker's exposure to secondhand smoke.
 - 2. The U.S. Environmental Protection Agency (EPA) finds that secondhand smoke is a group of carcinogen – a category reserved for known cancer-causing agents in humans.
 - 3. The National Institute for Occupational Safety and Health (NIOSH):
 - a. Finds that secondhand smoke poses an increased risk of lung cancer and, possibly, heart disease to people exposed in the worksite,

- b. Recommends that nonsmokers should not be exposed to secondhand smoke, and
 - c. Finds that nonsmokers can be protected by elimination of smoking in the building, or establishing separately ventilated smoking areas that exhaust directly to the outside.
- B. These studies find that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including cancer, heart disease and stroke in nonsmokers. At special risk are infants, children, teens, pregnant women, elderly people, nonsmokers with long-term exposure to secondhand smoke, individuals with cardiovascular disease, and individuals with impaired respiratory function. Also harmed are those with health conditions induced by breathing secondhand smoke including asthma, lung cancer, heart disease, respiratory infection, decreased respiratory function, including broncho-constriction and broncho-spasm.
- C. Accordingly, Wayne County finds and declares that the purpose of this regulation and the health department regulation is to protect the public health and welfare by regulating smoking in public places and employment and recreation.

Section 1005. Definitions

- A. The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:
 - 1. “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.
 - 2. “Business Vehicle” means by car, bus, van or other motorized unit which is owned or leased by an employer for the use of employees.
 - 3. “Convention Hall” means any enclosed area where public or private groups assemble to engage in business or social functions.
 - 4. “Employee” means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit or business entity.
 - 5. “Employer” means any person, business, partnership, corporation, including a municipal corporation, or nonprofit entity, who employs the services of one or more individual persons.
 - 6. “Enclosed Area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or window (exclusive of 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.
 - 7. “Food Concession” means a food storage, preparation, or dispensing operation at a state or county fair.
 - 8. “Food Service Establishment” means a fixed or mobile restaurant, coffee shop, cafeteria, short order café, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar,

cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public. Food Service Establishment does not include:

- i) A motel that serves continental breakfasts only;
 - ii) A food concession;
 - iii) A bed and breakfast that has ten (10) or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper.
 - iv) A bed and breakfast that has at least eleven (11) but fewer than fifteen (15) rooms for rent, if the bed and breakfast serves continental breakfast only; or
 - v) A childcare organization regulated by Michigan Law unless the establishment is carrying out an operation considered by the State of Michigan to be a food service establishment.
9. "Gaming Venue" means a casino licensed and regulated by the Michigan Gaming Control Board, a casino operating pursuant to a gaming compact with the State of Michigan, and a racetrack licensed and regulated by the office of the Michigan Racing Commissioner.
10. "Health Officer" means the local health officer as defined by MCL 333.1105(3).
11. "Public Place" means any enclosed area 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, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."
12. "Secondhand Smoke", sometimes referred to as environmental tobacco smoke, is a mixture of the smoke given off by the burning ends of a cigarette, pipe, cigar, bidis, and kreteks (side stream smoke) and the smoke emitted at the mouthpiece and exhaled for the lungs of smokers (mainstream smoke).
13. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
14. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or related substance or product.
15. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar enclosed areas where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events, excluding such portions of said facilities which are licensed as a food service establishment.
16. "Tobacco Specialty Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
17. "Worksite" means an enclosed area under the control of a public or private employer which employees normally frequent 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 "worksite" unless it is used as a childcare, adult day care or health care facility.

Section 1006. Prohibition of Smoking in Public and Private Worksites and Public Places

- A. Smoking is prohibited in all enclosed areas of public and private worksites and public places within Wayne County, including, but not limited to the following places:
1. All enclosed areas of worksites and public places owned, rented, leased or otherwise in Wayne County, including business vehicles.
 2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
 3. Buses, taxicabs and other means of public transit operated in the County of Wayne, and ticket, boarding, and waiting areas of public transit depots.
 4. Service lines.
 5. Retail stores.
 6. All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to, attorneys offices and other offices, banks, laundromats, hotels and motels.
 7. All areas of galleries, libraries and museums.
 8. Any facility which is primarily used for exhibiting any motion picture, stage production, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production.
 9. Sports arenas.
 10. Convention halls.
 11. Public and private meeting facilities.
 12. 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 agencies or Wayne county or any political subdivision of the State of Michigan, to the extent such location is in Wayne County.
 13. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor's offices, and dentist's offices.
 14. Lobbies, hallways and other common areas in: hotels, motels, multiple-tenant office buildings and malls, apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 15. At least seventy percent (70%) of hotel and motel rooms rented to guests with a goal of at least eighty percent (80%).
- B. Notwithstanding any other provision of this regulation, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Section 1007. Prohibition of Smoking in Places of Employment

- A. It shall be the responsibility of employers to provide a smoke-free worksite as set forth in this regulation.
- B. Upon the effective date of this regulation, each employer having an enclosed place of employment located within Wayne County shall adopt, implement, make known and maintain a written smoking policy. The policy shall contain, at a minimum, the following wording or requirements:

Smoking is prohibited in all enclosed areas within this worksite without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, employer owned or leased vehicles, and all other enclosed facilities.
- C. The smoking policy shall be communicated to all current employees at least three (3) weeks prior to its effective date, and at the time of the employment of all other employees.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Section 1008 Prohibition of Smoking Near Entrances, Windows and Ventilation Systems

Smoking shall be prohibited within a distance surrounding entrances, windows that may be opened or used for ventilation, and ventilation systems of all worksites and public places covered by this regulation so that persons entering and exiting these buildings may do so without being negatively impacted by secondhand smoke.

- A. It shall be the responsibility of the owner of a regulated building to proscribe appropriate smoking and non-smoking areas surrounding entrances, windows and ventilation systems.
- B. If the public health officer receives a complaint regarding a violation of this section, the officer shall conduct an investigation and review the designated non-smoking area with the business owner to ensure that an appropriate non-smoking perimeter has been established.
- C. For purposes of this section, there shall be a rebuttable presumption that a distance of six (6) feet surrounding the entrance, window, or ventilation system shall be adequate.
- D. If a six (6) foot area cannot be designated for a particular business, the public health officer will advise the owner of an appropriate distance or area.

Section 1009. Where smoking is not regulated

- A. Notwithstanding any other provision of this regulation to the contrary, the following areas are not subject to the smoking restrictions of this regulation:
 - 1. Food service establishments.
 - 2. Private residences, except when used as a childcare, health care facility or adult care facility.
 - 3. Tobacco Specialty stores.

4. This regulation does not apply to licensed premises as defined by section 12601 of the public health code, which are defined as any portion of a building, structure, room or enclosure in which alcoholic liquor may be sold for consumption on the premises pursuant to a license issued by the Michigan Liquor Control Commission.
5. Bingo halls.
6. A designated smoking room which has been inspected and approved by the public health officer after the health officer has determined that the designated smoking room protects non-smokers from the harmful effects of secondhand smoke. While each request for a designated smoking room will be reviewed on an individual basis, it is hereby acknowledged that a negative air pressure ventilation system for a proposed designated smoking room is an acceptable strategy. The provision of a designated smoking room shall not result in the diminishment of workplace amenities currently afforded to non-smoking employees nor require that they enter a designated smoking room to access those amenities.

In accordance with chapter 129 of the Wayne County Code of Ordinances, the public health officer is authorized to charge a reasonable fee for this service based upon the proportional cost to the county of complying with this requirement.

7. Gaming Venue.
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a non-smoking establishment.

Section 1010. Posting of Signs

- A. "No Smoking" signs are the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this regulation. The signage shall be posted by the owner, operator, manager or other person having control of such building or other area.
- B. Every public place where smoking is prohibited by this regulation shall have signs conspicuously posted at every entrance clearly stating that smoking is prohibited.
- 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.

Section 1011. Enforcement

- A. Enforcement of this regulation shall be implemented by the health officer, or his or her designee.
- B. Notice of the provision set forth in this regulation shall be given by the county clerk to all applicants for assumed names in Wayne County.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement through the health officer, or his or her designated staff.
- D. The health department or the local fire departments should require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager,

operator or other person having control of such establishment that all requirements of this regulation have been complied with.

- E. Any owner, manager, operator or employee of any establishment regulated by this regulation shall inform persons who are violating this regulation of the appropriate provisions thereof.

Section 1012. Non-Retaliation

A person or employer shall not discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this regulation.

Section 1013. Violations and Penalties

- A. It shall be unlawful for any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation to knowingly fail to make a good faith effort to comply with any of its provisions. An individual is presumed to have made a good faith effort to comply with this regulation by requesting a smoker to either refrain from smoking or to vacate the premises.
- B. It shall be unlawful for any individual to smoke in any area where smoking is prohibited by the provisions of this regulation. Any individual violating this section shall be subject to a warning and shall be required to leave the premises if she or he refuses to extinguish smoking material.
- C. Any individual violating subsection A or B shall be guilty of an infraction, punishable as follows:
 - 1. A warning for a first violation:
 - 2. A fine not exceeding one hundred dollars (\$100) for a second violation within one (1) year; and
 - 3. A fine not exceeding five hundred dollars (\$500) for a subsequent violation within one (1) year.

Section 1014. Appeal

Any individual found guilty of an infraction under any provision of this regulation may appeal such judgment as set forth herein:

- A. Not later than twenty (20) days after receipt of the citation, the alleged violator may petition the local health department for an administrative hearing which shall be held within thirty (30) days after the receipt of the petition. After the administrative hearing, the local health officer may affirm, dismiss, or modify the citation. The local health officer shall be final, unless within sixty (60) days of the decision the appropriate local governing entity or committee thereof, or in the case of a district department, the district board of health or committee thereof, grants review of the citation. After the review, the local governing entity, board of health, or committee thereof may affirm, dismiss, or modify the citation.
- B. A person aggrieved by a decision of a local health officer, local governing entity, or board of health under this section may petition the circuit court of the county in which the principal office of the local health department is located for review. The petition shall be filed not later than sixty (60) days following receipt of the final decision.

- C. A civil penalty becomes final if a petition for an administrative hearing or review is not received within the time specified in this section. A civil penalty imposed under this part is payable to the appropriate local health department for deposit with the general funds of the local governing entity, or in case of a district, the funds shall be divided according to the formula used to divide other district funds. A civil penalty may be recovered in a civil action brought in the county in which the violation occurred or the defendant resides.

Section 1015. Public Education

The Wayne County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this regulation 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 business and individuals explaining the provisions of this regulation.

Section 1016. Other Applicable Law

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 1017. Severability

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid. Such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

Section 1018. Effective Date [June 15, 2005]

This regulation shall be effective ninety days from and after the date of its adoption **[March 17, 2005]**.

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