

**WASHTENAW COUNTY, MICHIGAN
CLEAN INDOOR AIR REGULATION: ELIMINATING SMOKING
IN PUBLIC AND PRIVATE WORK SITES AND PUBLIC PLACES**

ADMINISTRATIVE ENFORCEMENT RULES

I. EFFECTIVE DATES OF THE REGULATION

- A. The Washtenaw County Board of Commissioners approved the regulation on November 20, 2002. According to Section 1016, "This regulation will be effective ninety (90) days from and after the date of its adoption." The effective date of this regulation is February 20, 2003.
- B. In Section 1006, part B., the regulation states, "Within 90 days of the effective date of this regulation, each employer having an enclosed place of employment located within Washtenaw County shall adopt, implement, make known and maintain a written smoking policy." The effective date for full employer compliance is May 21, 2003.
- C. In Section 1006, part C, the regulation states, "The smoking policy will be communicated to all current employees at least three (3) weeks prior to its effective date, and at the time of employment of all other employees." Employers delaying implementation of their policy until the last possible day, May 21, 2003, must then communicate their policy to current employees no later than April 30, 2003. Employers implementing their policies earlier than May 21, 2003 must communicate their policy to employees at least three weeks prior to the effective date of their policy.
- D. Employers and businesses that are unable to comply with the effective dates of the regulation due to hardship may request a hardship exemption through written notification to the Health Officer. This written notification must be provided within ninety (90) days of the effective date for full compliance with the regulation. The last date to file written notification of a request for a hardship extension is May 21, 2003. The longest expiration date for any hardship extension is February 20, 2004.

II. ENFORCEMENT PROCESS

The regulation, in Section 1010, states that this regulation will be implemented by the Health Officer, or his/her designee. Enforcement of this regulation will be a complaint driven process. Generally, the Department will not initiate an investigation, or inspect a situation, in the absence of a formal written complaint. In the event an inspection or investigation is conducted, all parties will be notified prior to the Department taking action.

A. CITIZEN COMPLAINTS

1. Any citizen who desires to register a complaint shall initiate enforcement through the Health Department. The complaint shall be in writing and signed by the complainant. The written complaint shall include the following information:
 - a. The date of the alleged violation
 - b. The name, address, and telephone number of the place where the violation occurred.
 - c. A description of the violation and information regarding the violator, if applicable.
 - d. The complainant's name, address, and telephone number.
2. All citizen complaints will be followed up within twenty (20) days. All parties to the complaint will be informed, in writing, upon resolution of the complaint.
3. If the complaint is determined by the Department to be unsubstantiated, or unfounded, the complainant will be notified, in writing, of the reasons for dismissal of the complaint. Typical rationale for dismissal may include, but not be limited to, inadequate information or that the employer is on the list of specifically unregulated institutions. Anonymous complaints will not be pursued.

B. EMPLOYEE COMPLAINTS

1. Any employee may lodge a complaint against his/her employer for violating the regulation. However, the employee shall first exhaust internal procedures of the employer.
2. Employee complaints will be handled identically to those of citizens, but only after it has been verified to the satisfaction of the Department, that all internal procedures have been exhausted. The Department's first action in dealing with a work site complaint will be to review the employer's work place smoking policy to ensure that it is essentially in compliance with the county regulation.
3. Smoking policy development advice and copies of sample model smoking policies will be made available to all employers who request it through Department. Additionally, the Department will have on hand, and provide upon request, a variety of community resources that may be of help to employers. These community resources will include information about other community health agencies willing to provide assistance on smoking policy development, and smoking cessation resources available to employers/employees.

C. NOTICE OF REGULATION

As set forth in Section 1010, the Department will make copies of the Regulation available to all applicants for a business license in Washtenaw County. Upon request, the Washtenaw County Health Department shall provide copies of the Regulation and other pertinent information. Interested parties may also obtain copies of the

Regulation and other information through Washtenaw County Health Department Internet website or by contacting the Health Department.

III. VIOLATIONS AND PENALTIES

- A. Pursuant to Section 1012, subsection B, an individual who violates the Regulation will first be given a warning to extinguish smoking materials or leave the premises. Failure to comply with the warning will result in a fine as specified in the regulation. An owner may impose its own penalties in accordance with its workplace smoking policy or general personnel policies.
- B. Pursuant to Section 1012, subsection C, an individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation who violates the Regulation is subject to civil penalties utilizing a combination of warnings and increasing fines as spelled out in Section 1012 B. of the regulation. A warning citation is the first level of penalty that may be handed out to any employer in violation of the regulation. Warning citations will not be issued to employers until such time that all the employers' internal procedures have been exhausted and the employer remains out of compliance with the regulation. Subsequent violations within one year from the first violation will be dealt with in accordance with the schedule of fines outlined in the regulation.
- C. The regulation states in Section 1012, part D., "Within twenty (20) days after receipt of a citation issued under this section, the alleged violator may appeal the citation as provided in Section 2462 of the Michigan Public Health Code, 1978 P.A. 368, as amended." The process is as follows:
 - 1. The alleged violator may petition the Public Health Department for an administrative hearing not later than 20 days after the receipt of the citation.
 - 2. The administrative hearing shall be held within 30 days after the receipt of the petition.
 - 3. After the administrative hearing, the Health Officer may affirm, dismiss, or modify the citation. The decision of the Health Officer shall be final, unless within 60 days of the decision, the alleged violator petitions the Washtenaw County Environmental Appeals Board for a hearing.
 - 4. A person aggrieved by a decision of the Health Officer or the Environmental Appeals Board may petition the Circuit Court of Washtenaw County. The petition must be filed not later than 60 days following receipt of the final decision.
 - 5. A civil penalty becomes final if a petition for an administrative hearing or appeals board hearing is not received within the time specified.

IV. MISCELLANEOUS SECTIONS

A. FOOD SERVICE ESTABLISHMENTS

State Law (Act 368 of 1978) section 333.12905 regulates smoking in food service establishments and section 333.12915 requires that:

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Environmental Appeals Board

“A county, city, village, or township shall not regulate those aspects of food service establishments or vending machines which are subject to regulation under this part except to the extent necessary to carry out the responsibility of a local health department pursuant to sections 12906 and 12908...”

For this reason, food service establishments are not regulated under this local regulation.

B. RETAIL FOOD ESTABLISHMENTS

The state Food Law of 2000 (Act 92 of 2000) regulates smoking in retail food establishments. Section 289.6127 prohibits smoking or burning of tobacco on the premises but allows designated smoking area for employees and the public that must be isolated from the retail food area. It also includes for persons who violate this section penalties of a misdemeanor punishable by a fine not to exceed \$100.

C. HARDSHIP EXTENSIONS

Section 1016 allows for the request of hardship extensions by employers seeking more time to comply with the terms of the regulation. The timetable for the appropriate filing of a hardship extension was previously described in this document, under the section titled " Effective Dates of the Regulation."

1. Written requests for hardship extensions must be filed with the Health Officer. At a minimum these written requests must contain appropriate contact information, a thorough explanation of the reason(s) why the employer feels he or she cannot reasonably meet the timetable for full compliance with the regulation, and a plan/timetable that the employer feels they can meet.
2. All hardship extensions are granted subject to the discretion of the Health Officer. The decision of the Health Officer shall be final, unless within 60 days of the decision the alleged violator petition the Washtenaw County Environmental Appeals Board for a hearing.

V. CHANGES TO ADMINISTRATIVE RULES

The Washtenaw County Board of Commissioners may amend, modify, or delete all or any portion of these Administrative Rules at any time.