

**MARQUETTE COUNTY HEALTH DEPARTMENT
REGULATION PROHIBITING SMOKING
IN PUBLIC AND PRIVATE WORKPLACES AND ENCLOSED PUBLIC PLACES,
NOT INCLUDING BARS & RESTAURANTS**

Sec. 1000. Title

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

Sec. 1001. Authority

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

Sec. 1002. Jurisdiction and Administration

A. This regulation shall have effect throughout Marquette County in all areas incorporated and unincorporated, which includes cities, villages, and townships.

B. The Health Officer shall have responsibility for administering and enforcing this regulation, including all amendments hereafter adopted unless otherwise specifically stated.

Sec. 1003. Purpose

A. Marquette County Board of Health hereby finds and declares that:

1. The U.S. Surgeon General, National Research Council, and National Academy of Sciences, report that environmental tobacco 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, separating smokers and nonsmokers within the same air space may reduce but does not eliminate a nonsmoker's exposure to environmental tobacco smoke.

2. The California Environmental Protection Agency (CEPA) finds that environmental tobacco smoke is a Group A 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

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, including the young, asthmatics and those with obstructive airway disease. Also harmed are those with health conditions induced by breathing secondhand smoke including asthma, lung cancer, heart disease, respiratory infection, decreased respiratory function, including bronchoconstriction and broncho-spasm.

4. The World Health Organization (WHO) International Agency for Research on Cancer concluded in 2002 that secondhand smoke increases the risk of lung cancer by 20 percent.

A. The chemicals in secondhand smoke poison the heart muscle, interfere with the ability of blood vessels to adjust themselves to control blood pressure and flow, increase the buildup of blockages of blood vessels (which lead to heart attacks), and make blood stickier. The net effect is that there are about 15 times more deaths from heart disease caused by passive smoking (35,000-62,000 deaths annually in the US) than lung cancer.

B. Accordingly, the Marquette County Health Department finds and declares that the purpose of this regulation is to comply with its statutory mandate to “prevent disease, prolong life, and promote the public health” by regulating smoking in public places and places of employment.

Sec. 1004. 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. "Convention Hall" means any enclosed area where public or private groups assemble to engage in business or social functions.

3. "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.

4. "Employer" means any person, business, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

5. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door 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.

6. "Food concession" means a food storage, preparation, or dispensing operation at a state or county fair.

7. "Food Service Establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, 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 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper; iv) a bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only; or v) a child care 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.

8. "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."

9. "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.

10. "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.

11. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or related substance or product.

12. "Sports Arena" means sport 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 facilities, or portions thereof, licensed as a food service establishment.

13. "Worksite" means any 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 class rooms, employee cafeterias and hallways. A private residence is not a "worksite" unless it is used as a child care, adult day care or health care facility.

Sec. 1005. Prohibition of Smoking in Public and Private Worksites and Enclosed Public Places

A. Smoking shall be prohibited in all enclosed public and private worksites and enclosed public places within Marquette County, including, but not limited to, the following places:

1. All enclosed areas of worksites and public places owned, rented, leased or otherwise under the control of Marquette County, including motor vehicles.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, taxicabs, and other means of public transit in the County of Marquette, 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 non-profit 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. Sports arenas.
9. Convention halls.
10. Public meeting facilities.
11. 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 of Marquette County or any political subdivision of the State of Michigan, to the extent such location is in Marquette County.
12. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors offices, and dentists offices.
13. 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.
14. Bingo halls.
15. Bowling alleys.

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.

Sec. 1006. 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. Within 90 days of the effective date of this regulation, each employer having an enclosed place of employment located within Marquette 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 employment of all other employees.

Sec. 1007. Prohibition of Smoking near Entrances, Windows and the Intake of Ventilation Systems

A. Smoking shall be prohibited near entrances, windows and ventilation systems of all worksites and public places where smoking is prohibited by this regulation. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation shall establish a no smoking area which extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; such reasonable distance shall be a distance sufficient to insure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to insure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means. All smoking trash receptacles shall be placed outside the no smoking area in order to discourage smoking in these areas.

B. Section 1007 (A) shall not apply to smoking that occurs within an enclosed or semi-enclosed outdoor smoking shelter, provided that said shelter is separated from the worksite or enclosed public place and its windows and ventilation system, and protects passing non-smokers from exposure to tobacco smoke.

Sec. 1008. Where Smoking is Not Regulated

A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall not be subject to the smoking restrictions of this regulation.

1. Food Service Establishments, including restaurants and bars (due to state preemption)
2. Private residences, except when used as a child care, health care facility or adult day care facility.
3. Tobacco specialty stores.
4. Hotel and motel meeting rooms or assembly halls while these places are being used for private functions.
5. Casino's owned and operated by federally designated Native American Tribes.

B. It is not the intent of this section to exempt employers, workplaces or public places from liability for illness caused by exposure to tobacco smoke.

C. 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 nonsmoking establishment.

Sec. 1009. Posting of Signs

A. "No Smoking" signs or 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.

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.

Sec. 1010. Enforcement

A. Enforcement of this regulation shall be implemented by the Health Officer, or his or her designee.

B. Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in Marquette 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. 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.

Sec. 1011. Non retaliation

No person or employer shall 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.

Sec. 1012. 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. A good faith effort shall, at a minimum, consist of the following:

1. adopting a written smoking policy in conformance with this regulation and informing employees of said policy;
2. establishing no smoking areas near entrances, windows and ventilation systems and removing smoking trash receptacles from these areas;
3. posting "no smoking" signage as required by this regulation and removing ashtrays and other smoking paraphernalia from any areas where smoking is prohibited by this regulation; and,
4. informing employees, members of the public and others who violate the no smoking regulation that they must refrain from smoking or leave the premises or be subject to the penalties specified by the regulation and/or the employer's smoking policy, or call the Marquette County Health Department if assistance is needed.

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 written warning. Upon being warned, the individual shall be required to extinguish smoking materials or to leave the premises. If he or she refuses either to leave the premises or to extinguish smoking materials, he or she shall be guilty of a civil infraction, punishable by a fine of \$75 for the first and each of all subsequent violations.

C. Any individual who owns, manages, operates, or otherwise controls use of any premises subject to jurisdiction under this regulation is required to take reasonable and necessary steps to enforce the provisions of this regulation. In the event these steps are not taken and a violation of any provision of this regulation occurs, that individual shall be guilty of a civil infraction, punishable by:

1. A warning citation for a first violation.

2. A fine not exceeding fifty dollars (\$75) for a second violation within one (1) year from a finding of the first violation, provided that adequate time has elapsed between the first and second violation for the alleged violator to have received notice of the first violation.

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. Further appeals, as provided by statute, may be to the Marquette County Board of Health, or a committee thereof.

E. Notwithstanding the existence and pursuit of any other remedy, the Health Officer or his/her designee, without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any persons to restrain or prevent a violation of this regulation.

Sec. 1013. Public Education

The Marquette 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 businesses and individuals explaining the provisions of this regulation.

Sec. 1014. Other Applicable Laws

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

Sec. 1015. 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.

Sec. 1016. Effective Date

A. This regulation shall be effective ninety (90) days from and after the date of its approval by the Marquette County Board of Commissioners.