

# CLARK COUNTY BOARD OF HEALTH

## REGULATION NO. C-08-01

### A REGULATION RELATED TO THE PROTECTION OF THE PUBLIC HEALTH AND WELFARE BY REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

#### Section 1. Findings and Intent:

The Clark County Board of Health does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that: (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP*, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including

low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting," *California Air Resources Board (ARB)*, September 12, 2005.)

Scientific evidence has firmly established that there is no safe level of exposure to secondhand tobacco smoke, a pollutant that causes serious illness in adults and children. There is also indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke. (World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," *World Health Organization (WHO)*, 2007.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.) Similar studies have been conducted in Bowling Green, Ohio; Monroe County, Indiana; Pueblo, Colorado; New York State; France; Greece; Italy; and Scotland. All of these studies have reached the conclusion that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smoke-free laws. ([n.a.], "Bibliography of Secondhand Smoke Studies." *American Nonsmokers' Rights Foundation*, February 26, 2008.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its

ventilation standards on totally smoke-free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smoke-free in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzias, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations. (Klepeis, N.; Ott, W.R.; Switzer, P., "Real-time measurement of outdoor tobacco smoke particles," *Journal of the Air & Waste Management Association* 57: 522-534, 2007.)

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure; and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smoke-free restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Hundreds of communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smoke-free, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay.

There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. (“The high price of cigarette smoking," *Business & Health 15(8), Supplement A: 6-9, August 1997.*)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the Clark County Board of Health finds and declares that the purposes of this regulation are: (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

## **Section 2. Definitions:**

The following words and phrases, whenever used in this Regulation, shall be construed as defined in this Section:

A. “Bar” means an establishment that is 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including, but not limited to, retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

C. "Employee" means a person who works in consideration for wages or profit, or who volunteers his or her services for an employer.

D. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

E. "Enclosed Area" means all space between a floor and a ceiling that is bordered thirty (30) percent or more by doors, walls, or windows, whether open or closed, the combination of which extend from the floor to the ceiling. A wall includes any physical barrier, whether temporary or permanent, solid or permeable.

F. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

G. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a licensed child care, adult day care, or health care facility.

H. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by its members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. § 501.

I. "Public Place" means an area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, whether public or private, health care facilities, hotel and motel lobbies, laundromats, polling places, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited or permitted. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

J. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

K. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco, tobacco products and accessories and in which the sale of other products is merely incidental.

L. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

M. "Shopping Mall or Flea Markets" means an enclosed public walkway or hall area that serves to connect retail, professional establishments or booths.

N. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, or other combustible tobacco product.

O. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places

where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

**Section 3. Application of Regulation to City-owned and County-owned Enclosed Public Places or Enclosed Places of Employment:**

All enclosed public places or enclosed places of employment owned or operated by the City of Winchester or Clark County, or any subdivision or unit thereof, shall be subject to the provisions of this Clark County Board of Health Regulation.

**Section 4. Prohibition of Smoking in Enclosed Public Places:**

Smoking shall be prohibited in all enclosed public places within Clark County, including, but not limited to, the following places:

A. Areas available to and customarily used by the general public in businesses patronized by the public, including, but not limited to, banks, laundromats, professional offices, and retail service establishments.

B. Bars.

C. Bingo facilities.

D. Child care and adult day care facilities.

E. Convention facilities.

F. Health care facilities.

G. Hotels and motels.

H. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

I. Private clubs when being used for a function to which the general public is invited.

J. Restaurants.

K. Retail stores.

L. Service lines.

M. Sports arenas, including enclosed places in outdoor arenas.

N. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

## **Section 5. Prohibition of Smoking in Enclosed Places of Employment:**

Smoking shall be prohibited in all enclosed areas of places of employment. This shall include, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, lounges, stairs, and restrooms.

## **Section 6. Prohibition of Smoking in Certain Outdoor Public Places and Certain Outdoor Places of Employment:**

Smoking shall be prohibited in the following outdoor public places and outdoor places of employment:

- A. Service lines.
- B. Sports arenas, including within a minimum distance of twenty (20) feet within bleachers, grandstands or other seating areas for use by spectators at sporting and other public events.
- C. Within a reasonable distance from the outside entrance to or operable windows of any area in which smoking is prohibited by this Regulation and from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to ensure tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means.

## **Section 7. Where Smoking is Not Regulated:**

Notwithstanding any other provision of this Regulation to the contrary, the following areas shall be exempt from the provisions of Sections 4, 5 and 6:

- A. Private residences, except when used as a licensed childcare, adult day care or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous. Smoke from the designated smoking rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this Regulation, which is the entirety of the remainder of the hotel/motel. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Regulation.
- D. Private clubs that have no employees; provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Regulation, and when members of the public are present at such clubs the prohibitions set out in Section 4 shall apply.

E. Outdoor areas of places of employment, except those covered by the provisions of Section 6.

### **Section 8. Declaration of Establishment as Nonsmoking:**

Nothing in this regulation may be construed as preventing an owner, operator, manager or other authorized person in control of any establishment, facility or outdoor area from declaring the entire campus or property associated with that establishment, facility or outdoor area smoke-free. Enforcement of any such restrictions exceeding the scope of this regulation would be the responsibility of the authorized person in control of the affected establishment, facility or outdoor area.

### **Section 9. Posting of Signs:**

The owner, operator, manager or other person in control of the premises shall be responsible for the placement of signage and the removal of ashtrays required by this Section.

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 and conspicuously posted in every public place and place of employment where smoking is prohibited by this Regulation.

B. A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by the public entering and exiting public places within which smoking is prohibited by this Regulation. A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by employees entering and exiting places of employment within which smoking is prohibited by this Regulation.

C. All ashtrays shall be removed from any area within which this Regulation or the owner, operator, manager, or other person having control of the area prohibits smoking, except for ashtrays displayed for sale and not for use on the premises.

### **Section 10. Non-retaliation and Non-waiver of Rights:**

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Regulation or reports or attempts to prosecute a violation of this Regulation.

B. An employee who continues to work in a setting where an employer allows smoking in violation of this Regulation does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

### **Section 11. Enforcement:**

A. Enforcement of this Regulation shall be by citation and will be the responsibility of the staff of the Clark County Health Department as designated by the Public Health Director. Enforcement may be conducted by any and all sworn law officers who work within Winchester

or Clark County. Enforcement shall be primarily done on a complaint basis but can be done at any time a violation is witnessed by an enforcement official.

B. Notice of the provisions of this Regulation shall be given to all applicants for a business license in the City of Winchester and Clark County by the appropriate clerk.

C. Any citizen who desires to register a complaint under this Regulation may initiate enforcement with any of the authorized persons listed above.

D. The Health Department, while in an establishment performing otherwise legal inspections, shall inspect for compliance with this Regulation.

E. If an owner, manager, operator, or employee of an establishment subject to this Regulation observes a person violating the Regulation, he or she shall immediately direct the person in violation to stop smoking. If the person violating the Regulation does not stop smoking, the owner, manager, operator, or employee shall ask the person to leave the premises. If the person in violation refuses to leave, the owner, manager, operator, or employee shall call local law enforcement.

In no event is an owner or agent of the premises to forcibly remove the person violating the Regulation. Compliance is achieved under the subsection if the owner or agent of the premises follows these steps.

F. Notwithstanding any other provision of this Regulation, the Clark County Health Department, an employee, or any person aggrieved by a failure to comply with this Regulation, whether by commission or omission, including violations on the part of an owner, operator, manager, employee or other person(s) in control of a public place or a place of employment covered by this Regulation, may bring legal action to enforce this Regulation, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

## **Section 12. Violations and Penalties:**

A. A person who smokes in an area where smoking is prohibited by the provisions of this Regulation shall be guilty of a violation, punishable by a fine of fifty dollars (\$50.00).

B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Regulation shall be guilty of a violation, punishable by:

1. A fine of one hundred dollars (\$100.00) for a first violation.
2. A fine of two hundred and fifty dollars (\$250.00) for a second violation within one (1) year from a previous offense date.
3. A fine of four hundred dollars (\$400.00) for a third violation within one (1) year from a previous offense date.

4. A fine of five hundred dollars (\$500.00) for the fourth and each additional violation within one year from a previous offense date.

C. In addition to the fines established by this Section, violations of this Regulation by a person who owns, manages, operates, or otherwise controls a public place or place of employment may serve as reasonable cause for the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

D. Violation of this Regulation is declared to be a public nuisance, which may be abated by the Board of Health or its designated agents by restraining order, preliminary and permanent injunction, or other means provided for by law. The Board of Health may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.

E. Each day on which a violation of this Regulation occurs shall be considered a separate and distinct violation. Multiple violations witnessed in a single observance shall also be considered separate and distinct violations.

### **Section 13. Enforcement Board:**

Any person or entity cited under this Regulation may appeal said citation and request a hearing before the Board of Health, save for criminal charges, which must be adjudicated in Clark District Court, and civil matters, which must be adjudicated in Clark Circuit Court.

### **Section 14. Other Applicable Laws:**

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

### **Section 15. Construction:**

This Regulation shall be construed so as to further its stated purposes.

### **Section 16. Severability:**

If any provision, clause, sentence, or paragraph of this Regulation or its application to any person or factual context shall be held invalid, that invalidity shall not affect the remaining provisions of this Regulation, which may be given effect independent of the provision or application declared invalid.

### **Section 17. Public Education:**

The Clark County Health Department shall engage in a continuing education 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 ordinance.

**Section 18. Effective Date:**

This Regulation shall be effective the 12th day of January, 2009. The foregoing Regulation was read for the first time on the 23rd day of September, 2008, read for the second time, passed and approved on the 6<sup>th</sup> day of November, 2008.

APPROVED BY:

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Brian Andreas, Board Chairman

ATTESTED TO:

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A. Scott Lockard, Board Secretary

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