

GENESEE COUNTY REGULATION TO PROHIBIT SMOKING IN ENCLOSED PLACES

Effective February 23, 2004

SECTION 1000 - TITLE

This Regulation shall be known as the Regulation to Prohibit Smoking in Enclosed Places.

SECTION 1001 - AUTHORITY

This Regulation is adopted pursuant to authority conferred upon local health departments by Section 2441(1) of the Michigan Public Health Code, Act 368, P.A. of 1978 as amended, MCL 333.1101 et seq.

SECTION 1002 - JURISDICTION AND ADMINISTRATION

- 1002.1 This Regulation shall have effect throughout Genesee County in all areas incorporated and unincorporated, which includes cities, villages and townships.
- 1002.2 The Health Officer shall have responsibility for administering and enforcing this Regulation, including all amendments hereafter adopted unless otherwise specifically stated.
- 1002.3 Nothing in this Regulation shall be construed to restrict or abrogate the authority of a municipality in Genesee County to adopt more restrictive regulation or ordinances.
- 1002.4 This Regulation is intended to be supplemental to the Michigan Clean Indoor Act, MCL 333.12601 et seq. and any other statutes enacted by the State of Michigan to protect the public health. Where the provisions of any other state law, ordinance, rule or regulation apply, the more restrictive of any or all laws, ordinances, regulations or rules shall prevail.
- 1002.5 Any person subject to this Regulation may be required to submit reports to demonstrate the status of compliance with the Regulation.

SECTION 1003 - FINDINGS AND PURPOSE

- 1003.1 Genesee County hereby finds and declares that:

- 1003.1.1 The U.S. Surgeon General¹, National Research Council², 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 nonsmokers exposure to environmental tobacco smoke.
- 1003.1.2 The U.S. Environmental Protection Agency³ (EPA) finds that environmental tobacco smoke is a Group A Carcinogen - a category reserved for known cancer-causing agents in humans.
- 1003.1.3 The National Institute for Occupational Safety and Health⁴ (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 environmental tobacco smoke (secondhand smoke), and
 - (c) indicates the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.
- 1003.2 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

¹ US Surgeon General Report. *The Health Consequences of Involuntary Smoking* Washington, DC: US DHHS, CDC, Center for Health Promotion and Education, Office on Smoking and Health 1986.

² National Research Council & National Academy of Sciences. *Environmental Tobacco Smoke: Measuring exposures and assessing health effects*. Washington, DC: National Academy Press 1986.

³ US Environmental Protection Agency. *Respiratory Health Effects of Passive Smoking: Lung Cancer and other Disorders*. Washington, DC: US EPA, Office of Research and Development 1992.

⁴ National Institute for Occupational Safety and Health. *Current Intelligence Bulletin 54: Environmental Tobacco Smoke in the Workplace: Lung Cancer and Other Health Effects*. US DHHS, CDCP, NIOSH, June 1991. DHHS Publication No. (NIOSH) 91-108.

function, including bronchoconstriction and broncho-spasm.

Accordingly, Genesee County finds and declares that the purpose of this Regulation is to protect the public health and welfare by prohibiting smoking in enclosed places in Genesee County.

SECTION 1004 - DEFINITIONS

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

- 1004.1.1 "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.
- 1004.1.2 "Employer" means any person, business, partnership, corporation, including a non-profit entity, who employs the services of one or more individual employees.
- 1004.1.3 "Enclosed Place" means a building which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways)
- 1004.1.4 "Food Service Establishment" means a facility defined in Section 1107(k) of the Food Law of 2000, MCL 289.1101 et seq.
- 1004.1.5 "Person" means an individual, partnership, corporation, governmental entity, receiver, trustee, assignee, or any other legal entity.
- 1004.1.6 "Specialty Retail Tobacco 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.
- 1004.1.7 "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.
- 1004.1.8 "Worksite" means any enclosed area under the control of an 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 lunchroom and hallways. A private residence is not a "worksite" unless it is used as a child care, adult day care or health care facility.
- 1004.1.9 "Business Vehicle" means a car, bus, van or other motorized unit which is owned or leased by an employer for the use of employees.

SECTION 1005 - PROHIBITION OF SMOKING IN ENCLOSED PLACES

- 1005.1 Except as otherwise provided in this Regulation, smoking shall be prohibited in all enclosed places, worksites and business vehicles within the County of Genesee, including but not limited to the following public places:
 - 1005.1.1 Elevators.
 - 1005.1.2 Buses and other means of public transit (except privately chartered vehicles), enclosed ticket, boarding and waiting areas of public transit depots, unless otherwise preempted by state or federal law.
 - 1005.1.3 Public restrooms.
 - 1005.1.4 Retail stores, including retail food production and marketing establishments.
 - 1005.1.5 Common areas, reception areas and waiting rooms 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, hotels and motels, laundromats, service lines, and shopping malls.
 - 1005.1.6 Public areas of aquariums, galleries, libraries, and museums when open to the public.
 - 1005.1.7 Any facility which primarily is used for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production.
 - 1005.1.8 Sports arenas and convention halls.
 - 1005.1.9 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 the County or any political subdivision of the State during such times as a public meeting is in progress.
 - 1005.1.10 Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
 - 1005.1.11 Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - 1005.1.12 Lobbies, hallways, and other common areas in multiple-unit commercial facilities.
 - 1005.1.13 Polling places, when used as polling places.
 - 1005.1.14 Child care centers and child care institutions.

- 1005.1.15 Family and group day care homes for children during hours of operation of the family and group day care homes.

SECTION 1006 - DESIGNATED SMOKING AREAS

- 1006.1 Except where smoking is prohibited by law, the owner or operator of a facility subject to this Regulation may designate a smoking area. If a smoking area is designated, it must conform to the following requirements:
- 1006.1.1 The designated smoking area shall be fully enclosed, with a self-closing door.
- 1006.1.2 The designated smoking area shall be a separate enclosed area and have a separate ventilation system, with its own exhaust fan(s) and air handling unit(s) to ensure that contaminants from the smoking area do not enter the nonsmoking areas or the air system for the rest of the facility. The owner or operator of the facility may be required to provide certification to the health department that the air handling system is adequate.
- 1006.1.3 The owner or operator of a facility subject to this Regulation shall provide employee break areas and public waiting areas for nonsmokers, which are equivalent in size to designated smoking areas.

SECTION 1007 – EMPLOYERS’ RESPONSIBILITIES

- 1007.1 It shall be the responsibility of employers to provide smoke-free worksites as set forth in this Regulation.
- 1007.2. Upon the effective date of this Regulation, each employer having an enclosed worksite located within Genesee 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, except in designated smoking areas. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, lunchroom, employee lounges, stairs, restrooms, employer owned or leased vehicles, and all other enclosed facilities.”
- 1007.3 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.

- 1007.4 Employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- 1007.5 Employers shall require that any individual violating the nonsmoking provisions of this Regulation shall extinguish smoking materials immediately and shall inform the individual of the penalty provisions of this Regulation.

SECTION 1008 - PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS AND VENTILATION SYSTEMS

- 1008.1 Smoking shall be prohibited near entrances, windows and ventilation systems of all facilities where smoking is prohibited by this Regulation. Any person 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.

SECTION 1009 - POSTING OF SIGNS

- 1009.1 "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. If designated smoking areas are provided, signs shall be posted to indicate that smoking is permitted only in designated smoking areas. The signage shall be posted by the owner, manager or other person having control of such building or other area.
- 1009.2 Every place where smoking is prohibited by this Regulation shall have signs conspicuously posted at every entrance clearly stating that smoking is prohibited. The signage shall be posted by the owner, manager or other person having control of such building or other area.
- 1009.3 All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Regulation by the owner, manager or other person having control of such area.

SECTION 1010 - FACILITIES WHERE SMOKING IS NOT PROHIBITED BY THIS REGULATION

- 1010.1 Notwithstanding any other provision of this Regulation to the contrary, smoking shall not be regulated in the following facilities:
 - 1010.1.1 Private Residences.
 - 1010.1.2 Private vehicles.
 - 1010.1.3 Food service establishments.
 - 1010.1.4 Specialty retail tobacco stores.
 - 1010.1.5 Privately rented guest rooms in hotels and motels.
 - 1010.1.6 Privately rented function rooms in hotels and motels. A person renting a private function room in a hotel or motel may declare the room to be smoke-free and may post "No Smoking" signs during the term of the rental.
 - 1010.1.7 Bowling centers which are in operation as of the effective date of this Regulation.
 - 1010.1.8 Race tracks which are in operation as of the effective date of this Regulation.
 - 1010.1.9 Small business operations where only one person occupies the worksite.
- 1010.2 Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any facility described in this section may declare that entire facility as a nonsmoking facility.

SECTION 1011 - FACILITIES WHERE SMOKING MAY BE PERMITTED WITH LIMITATIONS

- 1011.1 BINGO HALLS. A bingo hall, not otherwise exempt from this Regulation may provide a smoking area for patrons with the following limitations:
 - 1011.1.1 Smoking shall be prohibited in all common areas such as restrooms, entrances and exits.
 - 1011.1.2 The smoking area shall be fully enclosed and shall have a separate ventilation system, with its own exhaust fan(s) and air handling unit(s) to ensure that contaminants from the smoking area do not enter the air system for the rest of the facility. The owner or operator of the bingo hall may be required to provide certification to the health department that the air handling system is adequate.

- 1011.1.3 Bingo halls which are in operation as of the effective date of this Regulation shall have one year from the effective date of this Regulation to come into compliance with the requirements of this section.
- 1011.2 BOWLING CENTERS. A bowling center, not otherwise exempt from this Regulation, which begins operation after the effective date of this Regulation may provide a smoking area for patrons with the following limitations:
- 1011.2.1 Smoking shall be prohibited in all common areas such as restrooms, entrances and exits.
- 1011.2.2 The smoking area shall be fully enclosed and shall have a separate ventilation system, with its own exhaust fan(s) and air handling unit(s) to ensure that contaminants from the smoking area do not enter the air system for the rest of the facility. The owner or operator of the bowling center may be required to provide certification to the health department that the air handling system is adequate.
- 1011.3 RACE TRACKS. A race track, not otherwise exempt from this Regulation, which begins operation after the effective date of this Regulation may provide a smoking area for patrons with the following limitations:
- 1011.3.1 Smoking shall be prohibited in all common areas such as restrooms, entrances and exits.
- 1011.3.2. The smoking area shall be fully enclosed and shall have a separate ventilation system, with its own exhaust fan(s) and air handling unit(s) to ensure that contaminants from the smoking area do not enter the air system for the rest of the facility. The owner or operator of the race track may be required to provide certification to the health department that the air handling system is adequate.
- 1011.4 HOTELS AND MOTELS. The owner or operator of a hotel or motel shall, prior to executing a rental agreement, inform any person renting a private function room of their option to declare the room to be smoke-free during the term of the rental, and shall provide "No Smoking" signs to be posted in the room.
- 1011.5. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any facility described in this section may declare that entire facility as a nonsmoking facility.

SECTION 1012 - RIGHT OF ENTRY AND INSPECTION

- 1012.1 The Health Officer or his or her designee, after giving proper identification, may inspect any facility subject to this Regulation, as provided for by Section 2446 of the Public Health Code, MCL 333.2446. The Health

Officer may apply for an inspection or investigation warrant pursuant to Section 2242 of the Public Health Code, MCL 333.2242 to assure compliance with this Regulation.

SECTION 1013 - ENFORCEMENT

- 1013.1 Enforcement of this article shall be implemented by the Health Officer or his/her designees.
- 1013.2 Any individual may file a written complaint with the Genesee County Health Department.

SECTION 1014- VIOLATIONS OF THIS REGULATION

- 1014.1 It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.
- 1014.2 It shall be unlawful for any individual to smoke in any area where smoking is prohibited by the provision of this article.

SECTION 1015 - PENALTY FOR VIOLATION

- 1015.1 A person who violates a provision of this Regulation is guilty of a misdemeanor, as provided in Section 2441(2) of the Public Health Code, MCL 333.2441(2). In the case of continuing violations, each day's violation shall constitute a separate offense.

SECTION 1016 - SCHEDULE OF MONETARY CIVIL PENALTIES

- 1016.1 Under authority of Section 2461 of the Public Health Code, the following schedule of monetary civil penalties is adopted:
 - 1016.1.1 A warning citation for a first violation.
 - 1016.1.2 A fine not exceeding one hundred dollars (\$100) 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.
 - 1016.1.3 A fine not exceeding five hundred dollars (\$500) for a third violation of this Regulation within one (1) year from a finding of the first violation.
 - 1016.1.4 A fine not exceeding one thousand dollars (\$1000) for each additional violation of this Regulation within one (1) year from a finding of the first violation.
- 1016.2 A civil penalty is payable to the Genesee County Health Department and shall be deposited with the Genesee County Treasurer.

1016.3 A civil penalty may be appealed to the Health Department within 20 days of receipt of the citation, in accordance with Section 2462 of the Michigan Public Health Code, MCL 333.2462. Further appeals, as provided by statute, may be to the Genesee County Board of Commissioners, or a committee thereof.

SECTION 1017 - OTHER APPLICABLE LAWS

1017.1 This Regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 1018 - 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 article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

SECTION 1019 - EFFECTIVE DATE

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

SECTION 1020 – REPEAL

The Regulation to Control Smoking in Enclosed Public Places is hereby repealed in its entirety.