

Madison County Health Regulation 700, Clean Indoor Air Regulation, adopted by the Madison County Board of Health on April 11, 2007.

MCHR 700.000 **CLEAN INDOOR AIR REGULATION**

PURPOSE: (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.

MCHR 700.010 DEFINITIONS: The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

700.011 “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.

700.012 “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.

700.013 “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 an employer.

700.014 “Employer” means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

700.015 “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.

700.016 “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.

700.017 “Place of Employment” means any 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, employee lounges, restrooms, conference and meeting rooms, class rooms, employee cafeterias, hallways, and vehicles. A private

residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

- 700.018 “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 care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and facilities primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or similar performance, bingo halls, gaming facilities and waiting rooms. A private residence is not a “public place.”
- 700.019 ~~“Private Club” means any establishment that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member’s guest and is not profit oriented.~~
- “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 the 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. Section 501***
- 700.020 “Private function” shall be defined as a function in which no fee is charged and no tickets are sold, and no public announcements are made to the event and/or function.
- 700.021 “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in Sections 700-011.
- 700.022 ~~“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.~~
- 700.023 “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.
- 700.024 “Shopping Mall” or “flea markets” means an enclosed walkway or hall area that serves to connect retail, professional establishments, or booths.

700.025 ~~“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other combustible tobacco product.~~

***“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article***

700.026 ~~“Sports Arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.~~

***700.027 “E-cigarette” means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulated smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.***

MCHR 700.100 This MCHR is applicable to all City-Owned or County-Owned Facilities.

700.101 All enclosed facilities, including building and vehicles that are owned or leased by the cities of Berea and Richmond and by Madison County, shall be subject to the provisions of this MCHR.

700.200 PROHIBITION OF SMOKING IN PUBLIC PLACES

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

1. Elevators
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas
3. Service lines
4. 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, and laundromats
5. Restaurants
6. Bars
7. Public areas such as galleries, libraries and museums

8. Sports arenas and convention halls
9. Rooms, chambers, places of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of Madison County or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of Madison County.
10. Waiting rooms, hallways, wards, private and semiprivate rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, and any other health care providers
11. Auction houses and indoor flea markets
12. Licensed childcare and adult day care facilities
13. Lobbies, hallways, and other common areas of hotels and motels
14. Private clubs when used for a function to which the general public is invited

700.300 NO LIMITATIONS ON GOING SMOKE-FREE

700.310 Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls a public place or place of employment may declare that entire establishment or facility as a nonsmoking establishment.

700.400 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

700.401 It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

700.402 On or before the effective date of this regulation, each employer having an enclosed place of employment located within Madison County shall adopt, implement, make known and maintain a written smoking policy, and which shall contain the following requirements.

700.403 Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

700.404 The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

700.405 All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

700.410 REASONABLE DISTANCE

700.411 Designated smoking areas shall occur at a reasonable distance outside any entrance, exit, window, or ventilation units of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

700.420 WHERE SMOKING NOT REGULATED

700.421 Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from MCHR 700.

700.422 Private residences, except when used as a childcare, adult day care or health care facility.

700.423 No more than twenty-five percent (25%) of hotel and motel rooms rented to guests. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate in areas where smoking is prohibited under the provisions of this regulation. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

700.424 Outdoor areas of places of employment

700.425 ~~Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this regulation.~~

700.500 POSTING OF SIGNS

700.501 "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 building or other area where smoking is prohibited by this regulation, by the owner, operator, manager or other person having control of such building or other area.

700.502 Every public place where smoking is prohibited by this regulation shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

700.600 ASHTRAYS

700.601 All ashtrays 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.

700.700 ENFORCEMENT

700.701 If an owner, manager, operator or employee of an establishment regulated by the regulations observes a person violating these

regulations, he or she shall immediately direct the person in violation to stop smoking. If the person violating the regulations does not comply with this request, 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 the police.

- 700.702 In no event is an owner or agent of the premises to forcibly remove the person violating the regulations. Compliance is achieved under this subsection if the owner or agent of the premises follows these steps.
- 700.703 Enforcement of this Regulation shall be implemented by the Madison County Health Department, or its designee.
- 700.704 The Health Department shall, while in an establishment and is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.
- 700.705 Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in Madison County.
- 700.706 Any citizen who desires to register a complaint under this chapter may initiate enforcement with Madison County Health Department.
- 700.707 The mere presence of a person smoking within the premises of an establishment governed by this Regulation does not constitute a violation on the part of the establishment. The establishment and its agents shall only be charged for a violation of this Regulation if the responsible agent(s) of the establishment fail to timely satisfy each responsibility prescribed for them in this Section.
- 700.708 Notwithstanding any other provision of this Regulation, the Madison County Health Department, an employee, or any person aggrieved by the 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.
- 700.709 NON-RETALIATION
- 700.710 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.
- 700.711 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.

700.800 VIOLATIONS AND PENALTIES

700.801 Willful violation of this clean indoor air regulation is an unlawful act.

700.802 Person who smokes in an area where smoking is prohibited by the provisions of this Regulation shall be guilty, punishable by a fine not exceeding \$50.00.

700.803 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:

700.804 A fine not exceeding \$ 100.00 for the first violation within a one (1) year period.

700.805 A fine not exceeding \$ 300.00 for a second violation within one (1) year.

700.806 A fine not exceeding \$ 250.00 for each additional violation within one (1) year.

700.807 In addition to the fines established by this Section, violation of this Regulation by a person who owns, manages, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

700.808 Persons who smoke in an area where smoking is prohibited and who refuses to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for trespass if they do not leave when asked.

700.809 Each day on which a violation of this Regulation occurs shall be considered a separate and distinct violation.

700.850 PUBLIC EDUCATION

700.851 The Madison 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.

700.880 OTHER APPLICABLE LAWS

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

700.900 SEVERABILITY

700.901 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.

700.990 EFFECTIVE DATE

700.991 This regulation shall be effective sixty (60) days from and after the date of its adoption.

OFFICIAL

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