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# MUSKEGON COUNTY CLEAN INDOOR AIR REGULATION TOOLKIT

## TOOLKIT CONTENTS:

- Letter to Businesses
- Smoke Free Worksite Compliance Checklist
- Muskegon County Clean Indoor Air Regulation
- Administrative Procedure
- Complaint Form
- Sample Worksite Policy 1
- Sample Worksite Policy 2
- Sample Employee Agreement
- Sample Sign



Muskegon County Employer:

There are two recent legislations to control tobacco smoke in public places in Muskegon County.

### 1. Muskegon County Clean Indoor Air Regulation

- a. As of November 9, 2009, all public and private worksites (excluding bars, restaurants, and tobacco specialty stores) in Muskegon County must create and implement a policy prohibiting smoking in all enclosed areas.
- b. In addition, private residences that are used as a child care, health care or adult day care facility, or as a business open to the public must also be smoke free.
- c. You will find everything needed for compliance with this regulation in this toolkit and online at [www.muskegonhealth.net/programs/educational/tobacco.htm](http://www.muskegonhealth.net/programs/educational/tobacco.htm).

### 2. Michigan's Smoke Free Air Law

- a. As of May 1, 2010, all worksites in Michigan (including bars and restaurants) must be smoke free.
- b. Under this law, smoking is not allowed on patios and decks where food or beverage service is intended and is also prohibited in enclosed areas of hotels, motels, and inns (including rooms).
- c. You will find everything needed for compliance with this legislation at the state website: [www.michigan.gov/mdch/0,1607,7-132-2940\\_2955\\_2973\\_55026---,00.html](http://www.michigan.gov/mdch/0,1607,7-132-2940_2955_2973_55026---,00.html)

Our goal is to provide the tools to assist your workplace in making a smooth transition to a smoke free environment. For further information, call the Compliance Evaluator at Public Health – Muskegon County at (231) 724-1263. Thank you for your partnership in creating a healthy community.

Sincerely,

Ken Kraus, MPA  
Health Officer/Public Health Director

Ed Parsekian, CPS  
Public Health Educator/Compliance Evaluator



## Smoke Free Worksite Requirements in Muskegon County COMPLIANCE CHECKLIST

Legal Reference*	SECTION REQUIREMENT	COMPLIANCE MET	
		YES	NO
County 1005	Demonstrates understanding that smoking shall be prohibited in all enclosed public and private worksites within Muskegon County, including but not limited to those places listed in this section of the Regulation (including business vehicles).		
County 1006 B	Implement, make known and maintain a written smoking policy containing the basic requirements of the Regulation.		
County 1006 C	Communicate the Indoor Smoke-Free policy to current employees and to new employees at the time of hire.		
County 1006 D	Provide the written smoking policy upon request to any existing or prospective employee.		
County 1007	Establish that the outdoor no smoking area extends a minimum of 30 feet from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; in all cases the 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.		
County 1007	Insure that all smoking trash receptacles are outside the no smoking area.		

Legal Reference*	SECTION REQUIREMENT	COMPLIANCE MET	
		YES	NO
County 1009 A&B State 333.12603(2a)	"No Smoking" signage must be posted clearly and conspicuously in every building, at every entrance and area where smoking is prohibited by the provisions outlined in the Regulation.		
County 1009 C State 333.12603(2b)	Ashtrays and other smoking paraphernalia must be removed from any area where smoking is prohibited by the provisions of the Regulation.		
State 333.12603 (2c,d,e)	Direct any person who is smoking to extinguish the cigarette, cigar or other lighted tobacco item. If customers refuse to comply, stop service and ask them to leave. If necessary use your normal protocol for removing a disruptive customer from your premises. Document the steps taken to handle the situation.		
County 1011 State 333.12606	No person or employer shall discharge, refuse to hire or in any other manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises their right to a smoke-free environment afforded by this Regulation.		

**\* Legal Reference**

County refers to sections of the Muskegon County Clean Indoor Air Regulation

State refers to sections of the Michigan Public Health Code

Questions regarding compliance can be directed to the Compliance Evaluator at Public Health-Muskegon County at (231) 724-1263

# **The Muskegon County Clean Indoor Air Regulation**

**Adopted August 11, 2009**

**Effective November 9, 2009 and**

**as amended May 1, 2010**

# The Muskegon County Clean Indoor Air Regulation

## Sec. 1000. Title

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

## Sec. 1001. Authority

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

## Sec. 1002. Jurisdiction and Administration

A. This regulation shall have effect throughout Muskegon 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. The Muskegon County Board of Commissioners hereby finds and declares that:

1. 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.)

2. 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.)
  
3. 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.)
  
4. 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.)
  
5. There is no safe level of exposure to secondhand smoke. (Environmental Protection Agency (EPA), "Respiratory health effects of passive smoking: lung cancer and other disorders, the report of the U.S. Environmental Protection Agency. Smoking and Tobacco Control Monograph 4," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI); Environmental Protection Agency (EPA)*, August 1993; California Environmental Protection Agency, "Health Effects of Exposure to Environmental Tobacco Smoke," 1997; California Air Resources Board, "Proposed identification of environmental tobacco smoke as a toxic air contaminant," *Sacramento: California Environmental Protection Agency (Cal-EPA), Air Resources Board, Stationary Source Division, Air Quality Measures Branch, Office of Environmental Health Hazard Assessment (OEHHA)*, September 29, 2005.)
  
6. Inasmuch as 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.)

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.

C. Accordingly, the Muskegon County Board of Commissioners finds and declares that the purpose of this regulation is to protect the public health and welfare by regulating smoking in public places and places of employment and recreation.

#### **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. "Business Vehicle" means a car, bus, van or other motorized unit which is owned or leased by an employer for the use of employees.
3. "Convention Hall" means any enclosed area where public or private groups assemble to engage in business or social functions.
4. "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.
5. "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.
6. "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.

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

8. "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, food concession 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 any of the following: i) a motel that serves continental breakfasts only; ii) a bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, 1 or more of which are available for rent to transient tenants; iii) 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 iv) a child care organization regulated under 1973 PA 116, MCL 722.111 to 722.128, unless the establishment is carrying out an operation considered by the Director of the Michigan Department of Agriculture or his or her designee to be a food service establishment.

9. "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."

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. "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.

14. "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 Public Places**

A. Smoking shall be prohibited in all enclosed public and private worksites and public places within Muskegon 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 Muskegon County, including business vehicles.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, taxicabs, and other means of public transit under the authority of the County of Muskegon, and ticket, boarding, and waiting areas of public transit depots.
4. Business vehicles.
5. Retail stores and service lines.
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. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production.
9. Sports arenas.
10. Convention Halls.
11. Public and private meeting facilities.
12. 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 Muskegon County or any political subdivision of the State of Michigan, to the extent such location is subject to the jurisdiction of Muskegon County.
13. 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.
14. 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.

15. Public places where bingo games are held.

16. Hotel and motel rooms rented to guests.

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. Upon the effective date of this regulation, each employer having an enclosed place of employment located within Muskegon 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.

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

### **Sec. 1007. Prohibition of Smoking near Entrances, Windows and Ventilation Systems**

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 minimum of 30 feet from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; in all cases the 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.

**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. A cigar bar in compliance with MCL 333.12606a(1)
2. Private residences, except when used as a child care, health care facility or adult day care facility.
3. A tobacco specialty retail store in compliance with MCL 333.12606a(2).

B. 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 clearly stating that smoking is prohibited.

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 Muskegon 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. Public Health – Muskegon County shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this regulation have been complied with.

E. 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.

F. Notwithstanding any other provisions of this regulation, a private citizen may bring legal action to enforce this regulation.

### **Sec. 1011. Nonretaliation**

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 fail to comply with any of its provisions.

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 guilty of an infraction, punishable by either or both of the following:

1. A warning citation.
2. A fine not exceeding one hundred dollars (\$100).

C. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation and on whose premises a violation of any provision of this regulation occurs shall be guilty of an infraction, punishable by:

1. A warning citation for a first violation.
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.
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.

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.

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 Muskegon County Board of Commissioners, 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.

F. Notwithstanding any other provisions of this regulation, an employee or a private citizen may bring legal action to enforce this regulation.

### **Sec. 1013. Public Education**

Public Health - Muskegon County 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 days (90) days from and after the date of its adoption.

B. Amended March 9, 2010, effective May 1, 2010.

**Muskegon County Board of Commissioners  
Full Board Meeting**

**August 11, 2009  
3:30 p.m.**

**200**

2009-427     **ADOPT A PUBLIC HEALTH REGULATION ENTITLED "THE MUSKEGON COUNTY CLEAN INDOOR AIR REGULATION"**

HR09/08-67

The Human Resources Committee recommends, moved by Buzzell, seconded by Collins, to adopt a public health regulation entitled "The Muskegon County Clean Indoor Air Regulation" as it has been proposed by Public Health - Muskegon to take effect 90 days after adoption.

Roll Call

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Wade, Buzzell, Collins

Nays: None

**Motion Carried**

**Muskegon County Board of Commissioners  
Full Board Meeting**

**March 9, 2010  
3:30 p.m.**

**68**

2010-138     **ADOPT THE AMENDMENTS TO THE MUSKEGON COUNTY CLEAN AIR REGULATION AS PROPOSED**

HR10/03-22

The Human Resources Committee recommends, moved by Snider, seconded by Nash, to adopt the amendments to The Muskegon County Clean Air Regulation as proposed for Sections 1005, 1007, 1008, and 1016 to be effective May 1, 2010 as authorized by the Michigan Public Health Code (Act 368 of 1978), as amended, MCL 333.2442.

Ayes: Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Scolnik, Snider, Buzzell, Collins

Nays: None

Excused: Wade

**Motion Carried**

November 9, 2009

## **The Muskegon County Clean Indoor Air Regulation Administrative Procedures**

This document outlines the procedures of Public Health-Muskegon County (PHMC) to enforce the Muskegon County Clean Indoor Air Regulation, hereinafter referred to as the “Regulation”.

### **I. Effective dates of the regulation:**

- A. The Muskegon County Board of Commissioners approved the regulation on August 11, 2009. 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 November 9, 2009.
- B. In Section 1006, part B., the regulation states, “Upon the effective date of this regulation, each employer having an enclosed place of employment located within Muskegon County shall adopt, implement, make known and maintain a written smoking policy.” The effective date for full employer compliance is November 9, 2009.
- 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.”

### **II. Enforcement Process**

- The purpose of this section is to provide Public Health-Muskegon County (PHMC) with enforcement procedures that comply with the Michigan Public Health Code. [1978 PA 368, MCL 333.2441, 333.2442, 333.2461, 333.2462, 333.2463, 333.2465] and the Administrative Procedures Act.
- Enforcement of this regulation is complaint based.
- The Health Officer of PHMC will designate a compliance evaluator (CE) who will process complaints related to this regulation in a timely manner as described in the following procedures:
  - A) All complaints will be documented on the official Clean Indoor Air Regulation Complaint Form. The CE will:
    - 1. Assist complainant, if necessary, to complete the complaint form.
    - 2. Inform complainant how to access the complaint form electronically, if appropriate.
    - 3. Document all information related to the complaint, even if the complainant refuses to complete the form.
  - B) Once a complaint is received, and determined whether it is a complaint involving an individual or business, the following steps shall be taken and documented by the CE.

1. If involving an individual
  - a. Investigate complaint looking for supporting evidence.
  - b. If not valid or substantiated, document and close case.
  - c. If valid, issue a warning citation to the violator, for a first violation.
  - d. Notify violator about the regulation, subsequent actions for further non-compliance and the hearing protocol.
2. If involving a business, schedule a visit to the site and take the following actions:
  - a. Investigate complaint looking for supporting evidence.
    - i. If no evidence is found, document site visit and close case.
  - b. If evidence of a regulation violation is found
    - i. Provide a copy of the Regulation, Hearing Protocol and Compliance Checklist to Management who will sign a confirming receipt of same. In the case of a business owner or manager that is not available, an employee will sign a receipt stating he/she will share the information with management.
    - ii. If needed, provide an explanation of the Regulation and a policy template to assist in the development of a smoking policy that will be in compliance with the Regulation.
    - iii. Provide written notice of the violation and notice of 30 calendar days to come into compliance with the Regulation.
    - iv. Schedule a follow up visit to determine if the violation has been corrected.
3. If it is found during the 1<sup>st</sup> follow up visit that the violation has been corrected, the CE shall provide documentation of compliance to management and close the case.
4. If it is found during the 1<sup>st</sup> follow up visit that the violation has not been corrected, the CE shall:
  - a. Issue a warning citation to the business for a first violation.
  - b. Provide written notice allowing 30 calendar days to come into compliance.
  - c. Schedule a 2<sup>nd</sup> follow up visit to determine if the violation has been corrected.

5. If it is found during the 2<sup>nd</sup> follow up visit that the violation has been corrected, the CE shall provide documentation of compliance to management and close the case.
6. If it is found during the 2<sup>nd</sup> follow up visit that the violation has not been corrected, the CE shall:
  - a. Issue notice of first monetary civil penalty, in the form of a written violation ticket/citation in the amount of \$100, for a second violation.
  - b. Provide written notice allowing 30 calendar days to come into compliance.
  - c. Schedule a 3<sup>rd</sup> follow up visit to determine if the violation has been corrected.
7. If it is found during the 3<sup>rd</sup> follow up visit that the violation has been corrected, the CE shall provide documentation of compliance to management and close the case.
8. If it is found during the 3<sup>rd</sup> follow up visit that the violation has not been corrected, the CE shall:
  - a. Issue notice of second monetary civil penalty, in the form of a written violation ticket/citation in the amount of \$500, for a third violation.
  - b. Provide written notice allowing 30 calendar days to come into compliance.
  - c. Schedule a 4<sup>th</sup> follow up visit to determine if the violation has been corrected.
9. If it is found during the 4<sup>th</sup> follow up visit that the violation has been corrected, the CE shall provide documentation of compliance to management and close the case.
10. If it is found during the 4<sup>th</sup> follow up visit that the violation has not been corrected, the CE shall:
  - a. Issue notice of third monetary civil penalty, in the form of a written violation ticket/citation in the amount of \$1000 (same for each additional violation).
  - b. Provide written notice allowing 30 calendar days to come into compliance.
  - c. Schedule a follow up visit to determine if the violation has been corrected.

### **III. Monetary Civil Penalty Considerations**

- A. Issuance of monetary civil penalties (at all three violation levels as described in the Regulation Section 1012) is based on the facts and circumstances of the complaints and conduct of the individual smoking

and/or business with which he/she is associated. The violation(s) and conditions will be discussed with Public Health-Muskegon County management and a representative of Muskegon County Corporate Counsel as deemed necessary by management.

- B. Consultation with management and Corporate Counsel may not apply to the issuance of a monetary civil penalty by the CE to an individual in violation on the premises of a public place (Regulation Section 1004.A.9).
- C. The CE can issue a monetary civil penalty personally (to alleged violator) or deliver the ticket/citation to the responsible party by certified mail.
- D. The recipient of the monetary civil penalty ticket/citation will be instructed to pay the ticket in the time frame indicated and to refer to the ticket/citation for additional information.
- E. Non-payment of a monetary civil penalty after the 30-calendar day requirement for the violation will result in another violation.
- F. Correction of a violation prior to the expiration of the date does not eliminate the requirement to pay the monetary civil penalty.
- G. Payment of the monetary civil penalty does not eliminate the requirement to correct the violation.

#### **IV. Appeal Processes**

A) The regulation states in Section 1012.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. After receiving a request for an appeal, the Health Officer will appoint a three-person “hearing committee” consisting of the health officer or the deputy health officer, a supervisor and a member of the professional staff and schedule a hearing with the person appealing the citation hereafter referred to as the “appellant.”
2. At the hearing, the hearing committee and appellant will review the case as presented by the CE, whose presence is required, and any related evidence, ask a series of questions and provide an opportunity for the appellant to explain their position and rebut adverse evidence.
3. The hearing committee will create a record of all of the evidence presented at the hearing, based on the questions of the hearing committee, with conclusions of law based on those facts.

4. Within 30 days, the hearing committee will reach a decision and inform the appellant of the decision to grant or deny the appeal.
5. The hearing committee's decision can then be appealed for review by the County Board of Commissioners.
6. The County Board of Commissioners will have the discretion to review or not review the decision made by the hearing committee. This decision will be based on whether any Board member has concern, based on the record, that the Regulation was not correctly applied to the facts found by the hearing committee or that application of the Regulation would be inequitable to the appellant.
7. If the County Board chooses to not review the decision by the hearing committee, a letter denying the review will be sent and the appellant will be notified they are responsible for paying the fine.
8. If the County Board chooses to review the decision made by the hearing committee a letter will be sent notifying the appellant that a review will be conducted and when a decision will be made, which shall be provided within 60 days of the decision of the hearing committee.
9. The County Board Chairperson shall designate a three-person "review committee" and a presiding officer.
10. After the review of the record and resulting administrative decision, the review committee "may affirm, dismiss or modify the citation" (MCL 333.2462 (1)).
11. A decision of the hearing by the County Board review committee requires an affirmative vote of, at least, a majority of committee.
12. A final decision by the County Board review committee shall be made within a reasonable period of time and a copy of the decision shall be mailed to the appellant immediately.

B) A person aggrieved by a decision of the Health Officer, the Board of Commissioners, or a committee thereof, may petition the Circuit Court of Muskegon County. The petition must be filed not later than 60 days following receipt of the final decision (MCL 333.2462 (2)).

C) A civil penalty becomes final if a petition for an administrative hearing is not received within the time specified (MCL 333.2462 (3)).

## **V. Other Legal Remedies**

A) Appearance Ticket

1. Deputized Public Health-Muskegon County staff may issue appearance tickets when a business or individual violates a provision of the Regulation and fails to remedy the situation after repeated violations within the year timeframe. This action will bring the matter before district court. This action is appropriate when a violator fails to comply with a Public Health Department order.

B) Failure To Allow Entry

If any business owner refuses entry:

1. Determine if there are some safety or security measures that require that Public Health department staff be escorted.
2. A letter should be written, by the Health Officer to the owner/operator/employer of the business that reminds them that they are subject to inspection at reasonable times by the health department.
3. After more than one refusal without good cause, consult with corporate counsel about requesting a judicial warrant, authorizing Public Health-Muskegon County personnel to conduct an inspection of the premises. The warrant may authorize the presence of full service personnel of the Muskegon County Sheriff's Department to accompany the Public Health personnel on the inspection, if there is any reason to suspect that there will be any type of resistance to inspection on the premises.

C) Injunctive Action; Liability for Damages - MCL 333.2465

1. Notwithstanding the existence and pursuit of any other remedy, a local health officer, without posting bond, may maintain injunctive action to restrain, prevent, or correct a violation of a law, rule, or order which the officer has the duty to enforce, or to restrain, prevent, or correct an activity or condition which the officer believes adversely affects the public health.
2. A local health officer or an employee or representative of a local health department is not personally liable for damages sustained in the performance of local health department functions, except for wanton and willful misconduct.



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Kenneth A. Kraus, MPA, Health Officer  
Director of Public Health

2009-555     **ENDORSE THE PUBLIC HEALTH-MUSKEGON COUNTY  
ADMINISTRATIVE PROCEDURES FOR THE MUSKEGON COUNTY  
CLEAN INDOOR AIR REGULATION**

HR09/10-85

The Human Resources Committee recommends, moved by Buzzell, seconded by Collins, to endorse the Public Health-Muskegon County Administrative Procedures for the Muskegon County Clean Indoor Air Regulation to go into effect on November 9, 2009.

Roll Call

Ayes: Buzzell, Collins, Derezinski, Engle, Gill, Mahoney, McMurray, Nash, Snider, Wade

Excused: Scolnik

Nays: None

**Motion Carried**



**Smoke-Free Air Complaint Form:**

Complete this form to report a potential violation of the Michigan Smoke-Free Air Law or the Muskegon County Clean Indoor Air Regulation. Fields with the asterisk (\*) must be completed to be investigated.

\_\_\_\_/\_\_\_\_/\_\_\_\_      \_\_\_\_/\_\_\_\_/\_\_\_\_      \_\_\_\_:\_\_\_\_  am  pm  
\* Today's Date                      \*Date of Potential Violation                      \*Time of Potential Violation

\_\_\_\_\_  
\*Name of business or establishment where potential violation occurred

\_\_\_\_\_  
\*Street Address of Business                      \*Address of Business – City                      Zip Code of Business

\*Nature of Complaint: Please answer question A or B. **You do not need to answer both.**

A. Observed the following violation within a food service or bar establishment:

(You may choose more than one)

- Smoking inside establishment including but not limited to the dining area, bar area, restroom, or entryway
- Ashtrays present
- "No Smoking" signs not posted
- Smoking in kitchen, break room or other non-public area
- Smoking in an outdoor area intended for eating or drinking
- Person in charge fails to inform violator(s) to stop smoking
- OTHER: Please describe in detail below:

B. Observed the following violation within a non-food/non-bar establishment:

(You may choose more than one)

- Smoking in any indoor area including but not limited to the general work area, a private office, break room, stairway, or retail area
- Ashtrays present
- "No Smoking" signs not posted
- Smoking in an outdoor area within 30 feet of any entrance, operable window, ventilation intake system, or loading dock
- Smoking in a company vehicle
- OTHER: Please describe in detail below:

\*Please describe the violation in further detail in order to aid in the investigation:

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\*Did you attempt to resolve this issue prior to filing this complaint?     Yes     No  
If yes, describe in detail:

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\*Please read the statement and check the box:

I understand that all of the information regarding this complaint becomes public record. I understand that my name, if included below, may be released only upon request. While my name and contact information is not required, it may aid in the investigation of my complaint.

Optional:

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First Name

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Last Name

---

Area Code + Phone Number

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Email Address

Mail completed form to:  
Public Health – Muskegon County  
Tobacco Compliance  
209 E. Apple Avenue  
Muskegon, MI 49442

Fax: 231-724-3113  
Email: [publichealth@co.muskegon.mi.us](mailto:publichealth@co.muskegon.mi.us)  
Phone: 231-724-6350

## MODEL SMOKE FREE POLICY FOR BUSINESSES (#1)

### **STATEMENT OF POLICY**

To protect the public health and the well being of all employees, \_\_\_\_\_  
(Company name) shall be smoke-free effective \_\_\_\_\_.

**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.**

**Outdoor smoking shall be a minimum of 30 feet from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; in all cases the 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.**

### **ASSISTANCE TO SMOKERS**

Employees who smoke and would like to take this opportunity to quit may:

- Participate in smoking cessation programs offered by this company.
- Call Public Health-Muskegon County at (231) 724-6350 or access their website at [www.muskegonhealth.net](http://www.muskegonhealth.net) for information on smoking cessation services.

### **ENFORCEMENT OF POLICY**

Michigan Law requires that the [company] shall do all of the following:

- (a) Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol at the entrances to and in every building or other area where smoking is prohibited under this act.
- (b) Remove all ashtrays and other smoking paraphernalia from anywhere smoking is prohibited under this act.
- (c) Inform individuals smoking in violation of this act that they are in violation of state law and subject to penalties.
- (d) If applicable, refuse to serve an individual smoking in violation of this act.
- (e) Ask an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave the public place, food service establishment, or nonsmoking area of the casino.

Employees found to be in violation of this policy will be subject to any disciplinary action(s) in the same manner as violations of other company policies. All employees share in the responsibility for adhering to and enforcing this policy.

## **Complaints**

Violations of this policy should be brought to the attention of a supervisor or other designated personnel.

Any individuals not employed at this company and seen violating this policy should be notified of the policy and asked to extinguish smoking materials or leave the premises. If the individual refuses, contact the manager or other designated personnel for assistance.

For further assistance, or to register a complaint, visit the Muskegon County Clean Indoor Air Regulation or the Dr. Ron Davis Smoke free Air Law website at <http://www.muskegonhealth.net> or call the Compliance Evaluator at (231) 724-6350.

## **Investigations**

Supervisors or designated personnel receiving the complaint will investigate and take action to resolve the issue as soon as possible.

## **Violations**

Persons found to have violated this policy are subject to disciplinary action in the same manner and magnitude as violations of other agency policies.

## **Attachments**

- Agency procedure regarding handling of infractions of this policy.
- Employee Agreement for staff denoting review of this policy.
- Map of outdoor smoking area(s).

## Sample Policy for Businesses (#2)

### **STATEMENT OF POLICY**

In accordance with the Muskegon County Clean Indoor Air Regulation, Section 1006 and 1007, (this company), \_\_\_\_\_ is smoke-free effective on \_\_\_\_\_ (date).

**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.**

**Outdoor smoking shall be a minimum of 30 feet from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; in all cases the 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.**

### **ENFORCEMENT OF THIS POLICY**

State law requires that the [company] shall do all of the following:

- (a) Clearly and conspicuously post "no smoking" signs or the international "no smoking" symbol at the entrances to and in every building or other area where smoking is prohibited under this act.
- (b) Remove all ashtrays and other smoking paraphernalia from anywhere smoking is prohibited under this act.
- (c) Inform individuals smoking in violation of this act that they are in violation of state law and subject to penalties.
- (d) If applicable, refuse to serve an individual smoking in violation of this act.
- (e) Ask an individual smoking in violation of this act to refrain from smoking and, if the individual continues to smoke in violation of this act, ask him or her to leave the public place, food service establishment, or nonsmoking area of the casino.

All employees share in the responsibility for adhering to and abiding with this policy.

## **COMPLAINTS**

- Any person observing a violation of this policy will first bring it to the attention of the offending party and seek voluntary cooperation. If the offender is noncompliant, the employee will notify the owner, supervisor, or manager about the violation.
- Supervisors receiving a complaint will investigate and take action to resolve the issue as soon as possible.
- If all internal steps fail to result in compliance, you may contact the Compliance Evaluator at Public Health-Muskegon County at (231) 724-6350 for assistance or visit <http://www.muskegonhealth.net>.

## **VIOLATIONS**

Violations of the Muskegon County Clean Indoor Air Regulation or the Dr. Ron Davis Smoke free Air Law will be subject to disciplinary action(s) in the same manner as violations of other company policies.

Persons violating this regulation and investigated by the Public Health-Muskegon County will be subject to fines as outlined in the regulation.

# Sample Employee Agreement

I understand that Michigan State Law and the Muskegon County Clean Indoor Air Regulation prohibit smoking in public and private workplaces and public buildings within the county. The regulation also requires that I have reviewed our company's policy in compliance with this regulation and understand that failure to adhere to this policy could result in disciplinary action, consistent with company policy, and/or the filing of a complaint with Public Health-Muskegon County.

I agree to the following rules and company policy:

- 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.
- Outdoor smoking shall be a minimum of 30 feet from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; in all cases the 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.
- If I observe any person in violation of this policy, I will bring it to the attention of the offending party and seek voluntary cooperation.
- If the offender is noncompliant, I will notify a supervisor, manager or owner.
- I may contact the Public Health-Muskegon County Compliance Evaluator at (231) 724-6350 if all internal steps fail to result in compliance.

In turn, management agrees to support my efforts to insure compliance with this regulation and protection from the known hazards of secondhand smoke.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

(This agreement will be maintained in employee's personnel file.)

This Building Is:



**SMOKE FREE**

Thank You For Not Smoking.