

**BERRIEN COUNTY REGULATION No. 1 ELIMINATING SMOKING IN
PUBLIC AND PRIVATE WORKSITES AND PUBLIC PLACES,
NOT INCLUDING BARS & RESTAURANTS**

Sec. 1000. Title

This regulation shall be known as the Berrien County Clean Indoor Air Regulation.

Sec. 1001. Authority

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

Sec. 1002. Jurisdiction and Administration

A. This regulation shall prevail throughout Berrien County in all areas incorporated and unincorporated, which includes cities, villages, and townships, to the full extent of applicable law. Property and facilities held in trust by the Pokagon Band of the Potawatomi Indian Tribe are exempt from the provisions of this regulation.

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

Sec. 1003. Purpose

A. The Berrien County Board of Commissioners hereby finds and declares that:

1. The U.S. Surgeon General, National Research Council, and National Academy of Sciences, report that environmental tobacco smoke causes lung cancer in healthy adult nonsmokers, and can cause lung function and structure alteration to the fetus of pregnant nonsmoking women. Additionally, in utero exposure is known to predispose children to long-term pulmonary risks. Further, these agencies found, separating smokers and nonsmokers within the same air space may reduce but does not eliminate a nonsmoker's exposure to environmental tobacco smoke.

2. The U.S. Environmental Protection Agency (EPA) finds that environmental tobacco smoke is a Group A Carcinogen - a category reserved for known cancer-causing agents in humans.

3. The National Institute for Occupational Safety and Health (NIOSH):

(a) finds that secondhand smoke poses an increased risk of lung cancer and, possibly, heart disease to people exposed in the worksite,

(b) recommends that nonsmokers should not be exposed to secondhand smoke, and

(c) indicates the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.

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 Berrien 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. "Food concession" means a food 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, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere,

and any other eating or drinking establishment or operation where food is served or provided for the public. Food service establishment does not include: i) a motel that serves continental breakfasts only; ii) a food concession; iii) a bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper; iv) a bed and breakfast that has at least 11 but fewer than 15 rooms for rent, if the bed and breakfast serves continental breakfasts only; or v) a child care organization regulated by Michigan law unless the establishment is carrying out an operation considered by the State of Michigan to be a food service establishment.

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 or club 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. “Workplace” 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 “workplace” 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 workplaces and public places within Berrien County, including, but not limited to, the following places:

1. All enclosed areas of workplaces and public places owned, rented, leased or otherwise under the control of Berrien 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 Berrien 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 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. 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 Berrien County or any political subdivision of the State of Michigan, to the extent such location is subject to the jurisdiction of Berrien County.

12. Waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

13. Lobbies, hallways, and other common areas in hotels, motels, multiple-tenant office buildings and malls, apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

14. Public places where bingo games are held.

15. Eighty percent (80%) of hotel and motel rooms available for rent to guests.

B. 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 workplace as set forth in this regulation.

B. Upon the effective date of this regulation, each employer having an enclosed place of employment located within Berrien 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 workplace. 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 business vehicles, and all other enclosed facilities.

C. The smoking policy shall be communicated to all current employees 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 within 25 (twenty-five) feet of entrances, and ventilation systems of all workplaces and public places where smoking is prohibited by this regulation. Any individual who owns, manages, operates or otherwise controls the use of any premises subject to jurisdiction under this regulation shall establish a no smoking area which extends a reasonable distance, at least 25 feet, 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.

Sec. 1008. Where Smoking is Not Regulated

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

1. Food Service Establishments.
2. Private residences, except when used as a child care, health care facility or adult day care facility.
3. Tobacco specialty stores.
4. Property and facilities held in trust by the Pokagon Band of the Potawatomi Indian Tribe.

B. 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 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 public 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 Berrien 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. The Health Department or the Fire Department 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.

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 deemed responsible for 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 deemed responsible for 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 Berrien County Board of Health, or a committee thereof.

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

Sec. 1013. Public Education

The Berrien County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

Sec. 1014. Other Applicable Laws

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

Sec. 1015. Severability

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

Sec. 1016. Effective Date

A. This regulation shall be effective ninety (90) days from and after the date of its adoption.