

Introduced by the Human Services and Finance Committees of the:

INGHAM COUNTY BOARD OF COMMISSIONERS

**RESOLUTION TO AMEND THE REGULATION ELIMINATING SMOKING IN PUBLIC
AND PRIVATE WORKSITES IN INGHAM COUNTY**

RESOLUTION #02-117

WHEREAS, the Ingham County Board of Commissioners appointed the Ingham County Board of Health to assist the Commissioners and the Health Department in identifying major health problems in the County and make recommendations for improvement; and

WHEREAS, the Ingham County Board of Health identified Environmental Tobacco Smoke (ETS) as a serious environmental health problem in Ingham County; and

WHEREAS, it was proposed that the Board of Commissioners prohibit smoking in public and private workplaces in Ingham County; and

WHEREAS, on February 12, 2002, the Ingham County Board of Commissioners adopted Resolution #02-49 to regulate eliminating smoking and public and private worksites in Ingham County; and

WHEREAS, the Human Services Committee requested that the Health Department work with Corporation Counsel to identify those parts of the regulation that may be unclear and recommend changes; and

WHEREAS, the Health Department and Corporation Counsel have identified minor changes which are designed for clarification of the "Regulation Eliminating Smoking in Public and Private Worksites".

THEREFORE BE IT RESOLVED, that the Ingham County Board of Commissioners hereby adopts the amendments to the attached "Regulation Eliminating Smoking in Public and Private Worksites".

BE IT FURTHER RESOLVED, that Corporation Counsel has reviewed the changes and to implement such changes would not require an additional public hearing.

HUMAN SERVICES: Yeas: Hertel, Dedden, Lynch, Celentino

Nays: Severino **Absent:** None **Approved 4/22/02**

FINANCE: Yeas: Grebner, Stid, Swope, Krause, Hertel, Minter

Nays: None **Absent:** Schafer **Approved 4/24/02**

**INGHAM COUNTY, MICHIGAN
REGULATION ELIMINATING SMOKING
IN PUBLIC AND PRIVATE WORK SITES**

Sec. 1000. Title

This article shall be known as the Ingham County Clean 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 have effect throughout Ingham 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. Ingham County 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, can cause lung function and structure alteration to the fetus of pregnant non smoking 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) finds that nonsmokers can be protected by elimination of smoking in the building, or establishing separately ventilated smoking areas that exhaust directly to the outside.

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, Ingham County 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 constructed 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. "Convention Hall" means any enclosed area where public or private groups assemble to engage in business or social functions.

3. "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 entity.

4. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

5. "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.

6. "Food Service Establishments: means a fixed or mobile restaurant, coffee shop, cafeteria, short order café, 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.

7. "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."

8. "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.

9. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind, whether or not such service involves the exchange of money.

10. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette or pipe.

11. "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 facilities licensed as a food service establishment.

12. "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 family or group day care home for children during its hours of operation, health care facility or health care office.

Sec. 1005. Prohibition of Smoking in Public and Private Work sites

A. Smoking shall be prohibited in all enclosed public and private work sites within Ingham County, including, but not limited to, the following places:

1. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
2. Buses, taxicabs, and other means of public transit under the authority of the County of Ingham, and ticket, boarding, and waiting areas of public transit depots.
3. Service lines.
4. Retail stores.
5. All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to, attorneys' offices and other office, banks and laundromats.
6. All areas of galleries, libraries and museums.
7. 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.
8. Sports arenas.

9. Convention Halls.

10. Public and private meeting facilities.

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 Ingham County or any political subdivision of the State of Michigan, to the extent such location is subject to the jurisdiction of Ingham 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. On the premises of child care centers and child care institutions.

15. On the premises of family and group day care homes for children during hours of operation of the family and group day care homes.

Sec. 1006. Application of Regulation

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. This applies to governmental offices of and in Ingham County.

Sec. 1007 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. Notwithstanding any other provision of this regulation, an employer may designate a smoking room for employees, provided such area is a separate enclosed area and is separately ventilated so that smoke does not enter other non-smoking areas of the worksite; and, further provided that the employer shall simultaneously designate an equivalent non-smoking room for employees. The provisions of this section do not include municipal or other governmental employers.

C. Within 90 days of the effective date of this regulation, each employer having an enclosed place of employment located within Ingham County shall adopt, implement, make known and maintain a written smoking policy. If a current policy does not exist, the policy shall contain, at a minimum, the following wording:

Smoking is prohibited in all enclosed areas within this worksite except in designated areas. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, employer owned vehicles, and all other enclosed facilities.

D. 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.

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

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 family or group day care home for children during its hours of operation, health care facility or health care office.

3. Hotel and motel rooms rented to guests.

4. Tobacco specialty stores.

5. Hotel and motel meeting rooms or assembly halls while these places are enclosed areas, and being used for private functions.

6. A worksite used by a single business owner which does not ordinarily have public or employee interactions at the site, and does not share a ventilation system with any other worksite.

7. Public places where bingo games are held, except as otherwise prohibited under this regulation.

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 where they can be observed by all persons entering the building. 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 regulated shall have signs posted clearly, stating where 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.

D. The Health Department shall provide a supply of standard signage which shall be available at cost.

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 Ingham 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. However, if the complaint is against an employer, the employee shall first exhaust internal procedures.

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.

F. After exhausting an employer's internal procedures and the Health Department Administrative Rules, a private citizen may bring legal action against any employer 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 smokefree 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 subject to a warning and shall be required to leave the premises if she or he refuses to extinguish smoking materials.

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 two hundred dollars (\$200) for a third violation of this regulation within one (1) year from a finding of the first violation.

4. A fine not exceeding five hundred dollars (\$500) 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.

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

F. After exhausting an employer's internal procedures and the Health Department Administrative Rules, an employee or private citizen may bring legal action against an employer to enforce this regulation.

Sec. 1013. Public Education

The Ingham 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.

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 and effect all public and private work sites, unless the employer provides written notification within ninety (90) days from the effective day of the regulation to the Health Officer requesting a hardship extension. Hardship extensions of up to one (1) year may be granted at the discretion of the Health Officer.