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TO: Suzanne Shaw, Chair  
Washtenaw County Board of Commissioners

THROUGH: Robert E. Guenzel  
County Administrator

FROM: Ellen J. Clement  
Health Officer

DATE: November 6, 2002

SUBJECT: Approve Clean Indoor Air Regulation

BOARD ACTION REQUESTED:

Public Health is requesting the Board of Commissioners to approve the Clean Indoor Air Regulation to go into effect 90 days following their approval.

BACKGROUND:

The Board of Commissioners on April 3, 2002 by resolution 02-0067 directed the Public Health Officer along with the Director of Environment and Infrastructure Services to develop a regulation that prohibits smoking in public and private worksites and public places in Washtenaw County. On September 4, 2002 Commissioners received the proposed regulation and scheduled a public hearing on the proposed regulation to be held on October 2, 2002.

DISCUSSION:

Environmental tobacco has been declared a Group A carcinogen—a category reserved for known cancer causing agents in humans. Studies find that tobacco smoke is a major contributor to indoor air pollution and breathing secondhand smoke is a cause of disease. The National Institute for Occupational Safety and Health (NIOSH) finds that secondhand smoke poses an increased risk of lung cancer and, possibly, heart disease to people exposed in the worksite. Further, NIOSH recommends that nonsmokers should not be exposed to the secondhand smoke of smokers and finds that nonsmokers can be protected by the elimination of smoking in buildings. Washtenaw County, along with many county employers and public places, has already taken steps to eliminate

exposure to secondhand smoke by banning smoking in its buildings. The resolution passed in April indicates the County's willingness to take further action, using its power to establish regulations to protect the public's health, in the form of a regulation protecting all residents in their worksites and public places.

State law regulating restaurants effectively preempts local units of government from further regulating smoking in restaurants and bars. A recent challenge to a clean indoor air ordinance in Marquette, Michigan, that included restaurants was successfully overturned in court. It is possible that an alternative approach could be defended in court but would certainly face the same industry challenges. For this reason, the proposed regulation does not include bars and restaurants.

The proposed regulation prohibits smoking in all enclosed public and private worksites and public places within Washtenaw County, including, but not limited to:

- Washtenaw County worksites and motor vehicles
- Restrooms, lobbies, reception area, hallways and common-use areas
- Public transit
- Service lines
- Retail stores
- Business areas used by the general public
- Galleries, libraries and museums
- Exhibition and performance facilities
- Sports arenas
- Convention halls
- Public and private meeting facilities
- Places of public assembly
- Waiting rooms, hallways, wards of health facilities
- Lobbies and common areas in hotels, motels
- Public bingo games
- Worksites.

Not regulated are: food services establishments (including bars), private residences, tobacco specialty stores, bingo games, and public group homes and homeless shelters.

Once the ordinance is passed an enforcement policy will be finalized by the Health Officer to be implemented by Public Health Department staff. Materials will be distributed to employers and businesses explaining the new regulation and including model policies, suggested signs and smoking cessation resource information sheets. These resources will also be made available on the county website.

Subsequent to the public hearing modifications were made in the proposed regulation to:

- exempt public bingo games, public group homes and homeless shelters;
- increase fines for second and third violations
- include hotel and motel meeting rooms for private functions.

IMPACT ON HUMAN RESOURCES:

No additional staff will be required to implement the regulation. Existing staff of the Public Health Department will handle enforcement.

IMPACT ON BUDGET:

None.

IMPACT ON INDIRECT COSTS:

No impact on indirect costs.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

None.

CONFORMITY TO COUNTY POLICIES:

This request is in conformance with County policies.

ATTACHMENTS/APPENDICES:

Summary of Public Meeting Input

WASHTENAW COUNTY  
SMOKE FREE REGULATION INITIATIVE

**PUBLIC MEETINGS**

Summary Sheet

The following is a summary of the Public Meetings held in accordance with the Washtenaw County Smoke Free Regulation Initiative. The goal of the meetings was to provide an opportunity for public comment, which was vital to the development of the proposed regulation.

Public meetings were held in five (5) locations throughout Washtenaw County. Locations included Ann Arbor, Chelsea, Saline, Ypsilanti and Ypsilanti Township. A total of one hundred citizens voiced their comments and concerns through individual presentation / personal testimony, and/or commenting by card. Ninety-five participants were in favor of a county - wide clean indoor air policy. Representation included current employees of smoke free restaurants/restaurants, restaurant establishments, health professionals, small business employees, and community residents. The five against the regulation represented small business/restaurants owners, (bars, truck stops, college / young patrons), the Michigan License Beverage Association and county residents. Issues of concern were: (1) loss of patrons, (2) loss of individual rights, (3) availability of smoking areas, (4) reduction in revenue, and (5) overall government involvement.

The meeting format included a 2 to 3 person facilitator / panel, who received packets containing health codes relating to Smoking in Public Places, Food Service, Tobacco Products on School Property, Environmental Health and the Model Michigan County Regulation Eliminating Smoking. An agenda and copy of the power point presentation was also included. The presentation focused on the health hazards of secondhand smoke, where the restrictions would apply and the purpose of initiating a clean indoor air regulation. Materials displayed include Washtenaw County Tobacco Statistic – 2001, Smoking around Children and The Toll of Tobacco In Washtenaw: The Facts.

The Smoke Free Regulation Initiative was presented to a group of Milan Middle School youth participating in a tobacco prevention program. All (93) ninety-three students were in favor of a clean indoor air policy. Health issues and smoke annoyance were their major concerns.

Media assistance included radio announcements / interviews, press releases, email notifications, flyer distribution, development of a smoke free initiative support database and a smoke free restaurant letter writing campaign.

Transcribed copies of the public meetings are available upon request.

A RESOLUTION APPROVING A CLEAN INDOOR AIR REGULATION TO PROHIBIT  
SMOKING IN PUBLIC AND PRIVATE WORKSITES AND PUBLIC PLACES IN WASHTENAW  
COUNTY

WASHTENAW COUNTY BOARD OF COMMISSIONERS

November 6, 2002

WHEREAS, 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; and

WHEREAS, studies find that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease; and

WHEREAS, the National Institute for Occupational Safety and Health (NIOSH) finds that secondhand smoke poses an increased risk of lung cancer and, possibly, heart disease to people exposed in the worksite, recommends that nonsmokers should not be exposed to secondhand smoke, and finds that nonsmokers can be protected by elimination of smoking in buildings; and

WHEREAS, recognizing the health dangers of secondhand smoke, the County, along with many other businesses and units of local government in Washtenaw County have implemented restrictions on smoking in their worksites; and

WHEREAS, Washtenaw County still has many workers and citizens who are involuntarily exposed to secondhand tobacco smoke at work and in public places; and

WHEREAS, the Board of Commissioners on April 3, 2002 by resolution 02-0067 directed the Public Health Officer along with the Director of Environment and Infrastructure Services to develop a regulation that prohibits smoking in public and private worksites and public places in Washtenaw County; and

WHEREAS, the Public Health Officer and the Director of Environment and Infrastructure Services have held a series of public meetings to gather community and stakeholder input prior to developing the regulation; and

WHEREAS, the Public Health Officer and the Director of Environment and Infrastructure Services have developed a regulation that prohibits smoking in private work sites and public places but not including bars and restaurants; and

WHEREAS, the Public Health Officer and the Director of Environment and Infrastructure Services have made the proposed regulation available to community stakeholders for their information and comment; and

WHEREAS, this matter has been reviewed by the Public Health Advisory Board, Corporation Council, the County Administrators office, and the Ways and Means Committee

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners hereby approves the Washtenaw County Clean Indoor Air Regulation eliminating smoking in private worksites and in public places, effective ninety, (90) days from the date of adoption as attached hereto and made a part hereof.

**WASHTENAW COUNTY  
REGULATION ELIMINATING SMOKING  
IN PUBLIC AND PRIVATE WORKSITES AND PUBLIC PLACES**

**Sec. 1000. Title**

This regulation shall be known as the Washtenaw 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 have effect throughout Washtenaw 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. Washtenaw 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, 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) 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, Washtenaw 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 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. "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 consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit or business entity.

4. "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.

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

7. "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:

- a) a motel that serves continental breakfasts only;
- b) a food concession;
- c) a bed and breakfast that has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper;
- d) 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;
- e) 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.

8. "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."

9. "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.

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. "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**

Smoking shall be prohibited in all enclosed public and private worksites and public places within Washtenaw 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 Washtenaw County, including motor 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 Washtenaw, and ticket, boarding, and waiting areas of public transit depots.
4. Service lines.
5. Retail stores.
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 Washtenaw County or any political subdivision of the State of Michigan, to the extent such location is subject to the jurisdiction of Washtenaw 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, mobile or modular home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

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. Within 90 days of the effective date of this regulation, each employer having an enclosed place of employment located within Washtenaw 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 reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited; such reasonable distance shall be a distance sufficient to insure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to insure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means. All smoking trash receptacles shall be placed outside the no smoking area in order to discourage smoking in these areas.

## **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. Public residential facilities including, but not limited to, group homes and homeless shelters provided that they maintain distinct smoking room(s) that are separately ventilated to the outside and are in conformance with other applicable laws and regulations.
5. Public places where bingo games are held.

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. "This Building is Smoke-Free" signs, "No Smoking" signs, 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) or other appropriate signs 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 Washtenaw 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. 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 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 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 (\$1,000) 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 Washtenaw County Environmental Appeals Board, 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

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

The Washtenaw 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.

