

ARTICLE VI, Regulation of Smoking in Public Places and Worksites [Added 2-11-1997 by Res. No. 35-1997, approved 2-21-1997]

§ 569-48. Title.

This article shall be known as "Regulation of Smoking in Public Places and Worksites."

§ 569-49. Findings and intent.

A. The Monroe County Board of Health and Monroe County Legislature hereby find as follows:

(1) Significant health risks have been determined to be attributable to exposure to environmental tobacco smoke (ETS).

(2) According to the United States Environmental Protection Agency (EPA), ETS, also known as secondhand smoke, has been proven to be carcinogenic and has been designated a Group A (known human) carcinogen responsible for 3,000 lung cancer deaths each year in nonsmoking adults.

(3) The EPA also concludes that ETS causes other significant health problems in adults and children, including increasing the risks of respiratory and middle ear disease, and contributing to an estimated 150,000 to 300,000 cases of bronchitis and pneumonia in infants and young children each year.

(4) Exposure to ETS significantly worsens the condition of up to 1,000,000 asthmatic children and contributes to new cases of asthma in once-healthy children.

(5) Involuntary exposure to ETS presents a substantial and serious health risk to the residents and workers of Monroe County.

(6) A balance must be struck between safeguarding citizens from involuntary exposure to ETS, on the one hand, and minimizing government intrusion into the affairs of its citizens on the other.

(7) In some cases, there is a voluntary assumption of the hazard and, in other cases, an involuntary or coerced exposure. This wide range of conditions necessitates a tailoring of the regulations to match various circumstances.

B. Therefore, the Monroe County Board of Health and Monroe County Legislature declare that the intent and purpose of this article is to preserve and improve the public health by limiting the exposure of the public to ETS.

§ 569-50. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

**BAR or TAVERN** -- A business establishment that is devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the service of food is incidental to the business of the facility. Service of food shall be considered incidental if the food service generates less than 40% of total annual gross sales.

**BUSINESS** -- 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.

**EMPLOYEE** -- Any person who is employed by any employer for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

**EMPLOYER** -- Any person, partnership, corporation, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons.

**FOOD** -- Any edible substance, ice, beverage (excluding alcohol) or ingredient used or intended for use or for sale in whole or in part for human consumption.

**MULTIPLE-UNIT RESIDENCE** -- Any facility containing more than one residence unit where common space or facilities are present for use by the residents or the general public.

**PLACE OF EMPLOYMENT** -- 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 rooms and classrooms, employee cafeterias, hallways, garages and indoor loading docks. A private residence is not a place of employment unless it is used as a child-care or health-care facility.

**PRIVATE SOCIAL FUNCTION** -- Any weddings, parties, testimonial dinners or other similar gatherings in which the seating arrangements are under the control of the organizer or sponsor of the event and not the person who owns, manages, operates or otherwise controls the use of the place in which the function is held.

**PUBLIC PLACE** -- Any area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, correctional facilities, health facilities, bingo halls, indoor recreational facilities, laundromats, public transportation facilities, reception areas, restaurants, bars, retail food production and marketing establishments, malls, retail service establishments, retail stores, showrooms, theaters, waiting rooms and places of worship. A private residence is not a public place within the meaning of this article, except that areas in a private residence where a child-care center, health-care facility or other business (open to the public) is operated during the times of operation and areas in a private residence which constitute common areas of a multiple-unit residence are public places within the meaning of this article.

**RESTAURANT** -- Any coffee shop, cafeteria, sandwich shop, private or public school cafeteria and any other eating establishment which gives or offers food for sale to the public, guests, members or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

**RESTAURANT BAR AREA** -- A contiguous area of a restaurant, containing a counter, which is primarily devoted to the selling and serving of alcoholic beverages. This area shall include seating that is immediately contiguous to the bar if the bar area is separated from the remaining seating area by a permanent partition or is on a separate floor.

**RESTAURANT DINING AREA** -- The area(s) of a restaurant which are primarily devoted to the serving and consumption of food.

**RETAIL TOBACCO BUSINESS** -- A sole proprietorship, corporation, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail and in which the sale, manufacture or promotion of other products generates less than 10% of total annual gross sales.

**SEPARATE SMOKING ROOM** -- A room provided for smoking by the public in a public area of an indoor facility or for employees in a private facility. It must be served by a properly operating and properly maintained separate ventilation system, exhausted to the outside of the building in such a way as to prevent the reintroduction of smoke into the building, and it must be negatively pressurized or provided with doors which are self-closing or otherwise constructed in such a way as to prevent the escape of tobacco smoke to the smoke-free areas of the facility. A separate smoking room shall not comprise more than 25% of the total area open to the public in a public facility or of the employees in a private facility.

SERVICE LINE -- Any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

SMOKING -- Inhaling of, exhaling of, burning of or carrying of any lighted cigar, cigarette, weed or other plant in any manner or in any form.

SPECTATOR FACILITIES -- Any indoor or outdoor facility where members of the general public assemble to view and/or participate in scheduled events involving competitions, exhibitions, entertainment productions, trade shows, conventions or other events established for common purposes.

SPORTS ARENA -- Any indoor or outdoor stadium, sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard parlors and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

§ 569-51. Application to county-owned and county-leased facilities.

All enclosed facilities owned or leased by the County of Monroe shall be subject to the provisions of this article.

§ 569-52. Smoking in public places.

A. Smoking shall be prohibited in all enclosed public places within the County of Monroe, including but not limited to the following places:

(1) Elevators.

(2) Buses, taxicabs and other means of public transit, and ticket, boarding and waiting areas of public transit depots.

(3) Restrooms.

(4) Service lines.

(5) Retail stores.

(6) 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 professional offices, banks, laundromats, barbershops and beauty shops.

(7) Restaurants.

(a) Restaurants without a bar.

[1] Restaurants shall designate a contiguous nonsmoking area in the restaurant dining area consisting of 85% of its seating capacity.

[2] Effective January 1, 1999, restaurants shall designate as a nonsmoking area its entire restaurant dining area, the full 100% of its seating capacity.

(b) Restaurants with a bar.

[1] Restaurants with a bar shall designate a contiguous nonsmoking area in the restaurant dining area consisting of 85% of its seating capacity.

[2] Smoking may be allowed in the restaurant bar area.

[3]Effective January 1, 1999, restaurants with a bar shall designate as a nonsmoking area its entire restaurant dining area, the full 100% of its seating capacity.

(8)Galleries, libraries, museums and exhibition halls.

(9)Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, cabaret, comedy production, concert or other similar performance.

(10)Sports arenas, spectator facilities and convention halls.

(11)Bowling centers.

(a)Bowling centers shall designate a contiguous nonsmoking area consisting of 85% of its concourse area.

(b)Smoking may be allowed in the bar area, consistent with § 569-50.

(c)Effective January 1, 1999, smoking shall be prohibited in bowling centers, except smoking may continue to be allowed in the bar area.

(12)Bingo halls.

(a)Bingo halls shall designate a contiguous nonsmoking area consisting of 85% of its area.

(b)Effective January 1, 1999, smoking shall be prohibited in bingo halls.

(c) Smoking may be allowed in bingo halls in separate smoking rooms, provided that the room does not exceed 50% of the total seating of the facility.

(13)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 the county or any political subdivision of the county during such time as a public meeting is in progress.

(14)Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.

(15)Correctional facilities.

(16)Lobbies, hallways, offices and other common areas in multiple-unit residences, condominiums, retirement facilities, nursing homes and multiple-unit commercial facilities.

B.This section shall not prohibit smoking in separate smoking rooms as defined in § 569-50.

§ 569-52.1. Smoking in places of employment.

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

B.Each employer having any enclosed place of employment located within the County of Monroe shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements: Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, building entryways, classrooms, conference and meeting rooms, loading docks, garages, private offices, elevators, hallways, medical

facilities, cafeterias, employee lounges, stairways, restrooms, fleet vehicles and all other enclosed facilities.

C.The smoking policy shall be communicated to all employees within three weeks of its adoption.

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

E.This section shall not prohibit separate smoking rooms as defined in § 569-50.

§ 569-52.2. Further restriction of smoking.

Notwithstanding any other provision of this article, any owner, operator, manager or other person who controls any establishment described in this article may declare that entire establishment as a nonsmoking establishment.

§ 569-52.3. Where smoking is not regulated.

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

(1)Bars, including restaurant bar areas of restaurants.

(2)Private residences, except when used as child-care or health-care facilities or when used as a worksite which is open to the public or nonresident employee.

(3)Retail tobacco stores.

(4)Rooms in which private social functions are being held where seating arrangements are under the control of the sponsor of the function and not the owner or operator of the facility.

(5)Hotel and motel rooms rented to guests.

(6)Separate smoking room(s) as defined in § 569-50.

B.No area may be designated for smoking where prohibited by regulation of another agency having jurisdiction.

§ 569-52.4. Additional responsibilities of management.

The person in charge of a facility shall also be responsible to:

A.Provide ashtrays and smoking receptacles where smoking is permitted by this article and maintain locations where smoking is prohibited free of ashtrays or smoking receptacles.

B.Enforce this article by requesting compliance from patrons verbally or by presenting a nonsmoking card and by prohibiting employees from smoking, except in separate smoking rooms.

C.Develop and implement a plan of compliance, upon request, that is acceptable to the Monroe County Department of Health and which specifies areas where smoking is prohibited, and where smoking is permitted, if any. The plan must include the manner in which this information is conveyed to the public and all employees. The plan shall be available for inspection by the Director of Health or the Director's designees and shall be provided to the Monroe County Department of Health upon request.

§ 569-52.5. Variances and waivers.

A.Variance. The Monroe County Director of Health may, on written application and after review, grant a variance from a specific provision of this article, subject to appropriate conditions which shall include a time schedule for compliance when such variance is in harmony with the general purposes and intent of this article, and when there are practical difficulties or unnecessary hardship in complying with such provision.

B.Waiver. The Monroe County Director of Health, in his or her sole discretion, may waive, in writing, any of the requirements of this article when it reasonably appears to the Monroe County Director of Health that the public health will not be endangered by granting of such waiver and adequate alternative provisions have been made to protect the health of nonsmokers. A written application for a waiver is required. Initial waivers shall be valid for a period of not more than 24 months and may be renewed upon written reapplication. Under conditions of renewal, waivers may be granted for periods of time as deemed appropriate by the Monroe County Director of Health.

C.Revocation. The Monroe County Director of Health may revoke any waiver or variance after providing 30 days' written notice to the applicant/holder.

§ 569-52.6. Posting of signs.

SMOKING IS PROHIBITED, or NO SMOKING signs, using 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 prominently and conspicuously posted in every place where smoking is regulated by this article. These signs shall be posted by the owner, operator, manager or other person having control of such place. SMOKING PERMITTED signs shall be posted where the conditions established in this article have been met. Such signs shall be conspicuously posted at doors and entranceways to all facilities where smoking is permitted anywhere within the facility and at the entrances to the areas within these facilities where smoking is to be permitted. All signs shall be protected from tampering, damage, removal or concealment.

§ 569-52.7. Enforcement.

A.For the purpose of this article the term "enforcement officer" shall mean the Monroe County Board of Health, or its designee, the Monroe County Sheriff and other municipal law enforcement agencies operating in Monroe County.

B.If the enforcement officer determines after a hearing, pursuant to the Public Health Administrative Hearing Procedures adopted March 12, 1996, that a violation of this article has occurred, a civil penalty may be imposed by the enforcement officer pursuant to § 569-52.8 of this article. Nothing herein shall be construed to prohibit an enforcement officer from commencing a proceeding for injunctive relief to compel compliance with this article.

C.Any person who desires to register a complaint under this article may do so with any appropriate enforcement officer.

D.The person, firm, corporation or other entity that owns, manages, operates or otherwise controls the use of an indoor area open to the public in which smoking is prohibited or restricted pursuant to this article shall inform, or shall designate an agent who shall be responsible for informing, individuals smoking in an area in which smoking is not permitted that they are in violation of this article.

E.The decision of any enforcement officer shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

F.The enforcement officer, subsequent to any appeal having been finally determined, may bring an action to recover the civil penalty provided in § 569-52.8 of this article.

G.The owner, operator, manager or person in charge of the facility shall permit the Director of Health or the Director's designees entrance to the facility to determine compliance with this article.

§ 569-52.8. Penalties for offenses.

A.It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

B.It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

C.Any person who violates any provision of this article shall be guilty of a violation, punishable by a civil penalty not to exceed \$1,000.

§ 569-53. Other applicable laws.

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

§ 569-53.1. Severability.

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

§ 569-53.2. Effective date.

This article shall take effect on January 1, 1998.