

**JEFFERSON COUNTY BOARD OF HEALTH
ORDINANCE NUMBER 04-0216-06**

**JEFFERSON COUNTY
CLEAN INDOOR AIR
REGULATION**

February 16, 2006

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04-0216-06.010 -- PURPOSE

These clean indoor air regulations are adopted for the purpose of enforcing the Washington Clean Indoor Act, codified at Chapter 70.160 RCW and amended (effective December 8, 2005) by Initiative 901. The legislation enacted through Initiative 901 recognizes the pervasive health hazard of second-hand smoke. These rules are enacted to protect the public health and promote the safety and welfare of the citizens of Jefferson County through the prohibition of smoking in public places and places of employment. These regulations shall apply to all persons and in all territory within the boundaries of Jefferson County, except actions by persons on lands under the jurisdiction of the Federal Government or federally recognized American Indian Tribes.

It is expressly the purpose of these rules and regulations to provide for and promote the health of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of these rules and regulations.

Nothing contained in these rules and regulations is intended to be, nor shall be construed to create or form the basis for any liability on the part of Jefferson County Public Health or its officers, employees or agents, for any injury or damage resulting from the failure of any person subject to these rules and regulations to comply with these rules and regulations, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of these rules and regulations on the part of Jefferson County Public Health or its officers, employees or agents.

04-0216-06.020 – AUTHORITY

RCW 70.05.060(1) authorizes local boards of health to “(e)nforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health.” Subsection (3) of this statute further authorizes the local board to “(e)nact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof.” The Jefferson County Board of Health adopts this ordinance to preserve, promote, and improve the health of Jefferson County residents and to enforce the provisions of RCW 70.16, the Washington State Clean Indoor Air Act assigned to local health departments.

04-0216-06.030 – APPLICABILITY

All Jefferson County Public Health permitted places as defined in Section 04-0216-06.060 of this regulation, are subject to this regulation. All other public places as defined in Section 04-0216-06.060 are subject to Chapter RCW 70.160 RCW and are subject to enforcement Sections 04-0216-06.090.1, 04-0216-06.090.2, 04-0216-06.090.3, 04-0216-06.090.4 and 04-0216-06.090.5 of this regulation. Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under this chapter

shall prohibit smoking in public places and places of employment by 1) prohibiting smoking in the public place and/or place of employment under their authority and 2) posting signs prohibiting smoking as required by RCW 70.16.

Any person passing by or through a public place while on a public sidewalk or public right of way while smoking has not intentionally violated this regulation. Any person intentionally violating these regulations by smoking in a public place or place of employment or any person removing, defacing, or destroying a sign required by this regulation will be referred to local law enforcement.

04-0216-06.040 – BOARD OF HEALTH FINDINGS

The Jefferson County Board of Health finds that:

1. Extensive medical and scientific research confirms that secondhand smoke is harmful to smokers and nonsmokers alike causing eye, nose and throat irritation, aggravating lung and heart diseases including emphysema and is linked to various types of cancers.
2. Additional scientific research concludes that carbon monoxide levels in rooms and vehicles where smoking occurs often exceeds maximum permissible safety levels and that other hazardous compounds are released into the environment by tobacco smoke including but not limited to: tar, nicotine, nitrogen dioxide, ammonia, benzene, formaldehyde, hydrogen sulfide, hydrogen cyanide, and arsenic.
3. The Washington State Legislature has recognized the increasing evidence posed by environmental tobacco smoke in the workplace and has therefore enacted the Washington State Clean Indoor Air Act, codified at Chapter 70.160 RCW.
4. The People of Washington State have recognized the increasing evidence posed by environmental tobacco smoke in the workplace and have therefore revised the Washington State Clean Indoor Air Act through Initiative 901, codified at Chapter 70.160 RCW,
5. Chapter 70.160 RCW, as amended by the voters' approval of Initiative 901, became effective on December 8, 2005.
6. It is necessary to create this ordinance in order to comply with the enforcement and rebuttal requirements outlined in Chapter 70.160 RCW, as that statute was amended and revised by Initiative 901.

04-0216-06.050 -- EFFECTIVE DATE

The effective date of these regulations is February 16, 2006.

04-0216-06.060 -- DEFINITIONS

Terms used in this regulation shall have the meaning provided in Chapter 70.160 RCW, hereby adopted by reference. Certain definitions from Chapter 70.160 RCW are listed here for ease of reference.

Complaint is a report, either in writing or by telephone or other means by any person describing a potential violation of these regulations. Non-anonymous complaints will be considered viable when accurate information about the possible violation can be verified by Jefferson County Public Health staff.

Place of employment is any area under the control of a public or private employer in which employees are required to work or pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in section 04-0216-06.090 of this regulation, of twenty-five feet (25 feet) from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment for purposes of RCW 70.160 enforcement.

Presumptively Reasonable Distance is the distance in feet from the entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited by RCW 70.160. Twenty-five feet (25 feet) is defined by statute as the minimum presumptively reasonable distance of separation between a source of tobacco smoke and the entrances, exits, open windows, or ventilation intakes that serve an enclosed area where smoking is prohibited

Public place is that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited.

A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises. Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. This ordinance is not intended to restrict smoking in

private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

Secondhand smoke: means a mixture of smoke emitted from burning tobacco products and smoke exhaled by a smoker.

Smoke or smoking: means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

Violation: Occurs when a complaint registered by a person to Jefferson County Public Health has been witnessed or observed by Jefferson County Public Health staff. Only observed noncompliance will be considered an enforceable violation under these regulations.

04-0216-06.070 -- SMOKING PROHIBITED

Owners, or in the case of leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall prohibit smoking in public places and places of employment and shall post signs prohibiting smoking as required by statute. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place.

04-0216-06.080-- ADMINISTRATION AND ENFORCEMENT

Jefferson County Public Health shall enforce these regulations regarding the duties of owners or persons in control of public places and places of employment through the following actions:

1. Enforcement Authority

The Health Officer shall have the authority to enforce the provisions of these regulations equally on all persons. The Health Officer is also authorized to adopt rules consistent with the provisions of these rules and regulations for the purpose of enforcing and carrying out its provisions.

Nothing in these rules and regulations is intended to abridge or alter the rights of action by the state, other entities, the Health Officer or by persons, which exist in equity, common law or other statutes to abate non-compliance with these regulations. If a conflict exists in these regulations, or in the interpretation of Chapter 70.160 RCW, the more stringent regulation shall apply to better protect public health, welfare and safety.

2. Right of Entry

- A. Whenever necessary to make an inspection to enforce or determine compliance with the provisions of these regulations, and other relevant laws and regulations, or whenever the Health Officer has cause to believe that a violation of these regulations has or is being committed, the Health Officer or his/her duly authorized inspector may, in accordance with federal and state law, seek entry of any building, structure, property or portion thereof at reasonable times to inspect the same.
- B. If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection, and request entry.

3. Violations

- A. Violations of these regulations may be addressed through the remedies and penalties provided in this section.
- B. Each violation of these regulations shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be considered a separate and distinct violation.
- C. The Health Officer may investigate alleged or apparent violations of these regulations. Upon request of the Health Officer, the person allegedly or apparently in violation of these regulations shall provide information identifying themselves.

4. Voluntary Correction

Whenever the Health Officer determines that violation of these regulation has occurred or is occurring for the first time, he/she shall attempt to secure voluntary correction by sending a warning letter to the person(s) responsible for the alleged violation and, where possible, explaining the violation and requesting correction.

- A. Warning Letter and Voluntary Correction Agreement. The person responsible for the alleged violation may enter into a voluntary correction agreement with Jefferson County Public Health. The Warning Letter will be addressed to the last known owner and/or person in charge and will be educational in content, address the specific violations of these regulations that that may have occurred, and what the duties and responsibilities of the owner are to comply with these regulations. The voluntary correction agreement is a contract between Jefferson County Public Health and the person responsible for the violation in which such person agrees to abate the alleged violation within a specified time and according to specified conditions. The voluntary correction

agreement will be in lieu of the issuance of further citations. The voluntary correction agreement shall include the following:

1. The name and address of the person responsible for the alleged violation;
2. The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the alleged violation has occurred or is occurring;
3. A description of the alleged violation and a reference to the regulation, which has been violated;
4. The necessary corrective action to be taken, and a date or time by which correction must be completed;
5. An agreement by the person responsible for the alleged violation that Public Health may enter the place and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
6. An agreement that by entering into the voluntary correction agreement, the person responsible for the alleged violation waives the right to a hearing before the Health Officer under these regulations or otherwise, regarding the matter of the alleged violation and/or the required corrective action.

5. Notice and Order to Correct Violation

- A. Issuance. Whenever the Health Officer determines that a violation of these regulations has occurred or is occurring for the second time, he/she will issue a written notice and order to correct violation to the owner or person in charge.
- B. Content. The notice and order to correct violation shall contain:
 1. The name and address of the property owner or other persons to whom the notice and order to correct violation is directed;
 2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
 3. A description of the violation and a reference to that provision of the regulation, which has been violated;
 4. A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed;

5. A statement that each violation of this regulation shall be a separate and distinct offense and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation; and
 6. A statement that the failure to obey this notice may result in the issuance of a notice of civil infraction, and/or the assessment of an administrative remedy, and/or, if applicable, the imposition of criminal penalties.
- C. Service of Order. The notice and order to correct violation shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to correct violations by first class and / or certified mail postage prepaid, return receipt requested, to such person at his/her last known address.
- D. Extension. Upon written request received prior to the correction date or time, the Health Officer may extend the date set for corrections for good cause. The Health Officer may consider substantial completion of the necessary correction or unforeseeable circumstances that render completion impossible by the date established as a good cause.
- E. Supplemental Order to Correct Violation. The Health Officer may at any time add to, rescind in part, or otherwise modify a notice and order to correct violation. The supplemental order shall be governed by the same procedures applicable to all notice and order to correct violations procedures contained in these regulations
- F. Enforcement of Order. If, after any order is duly issued by the Health Officer, the person to whom such order is directed fails, neglects, or refuses to obey such order, the Health Officer may:
- a. Utilize any remedy or penalty under Section 04-0216-06.070 of these regulations; and/or
 - b. Abate the health violation using the procedures of these regulations; and/or
 - c. Pursue any other appropriate remedy at law or equity.

6. Notice of Civil Infraction (Ticket)

- A. Whenever the Health Officer determines that a violation of these regulations has occurred or is occurring for the third time, he/she will issue a Notice of Civil Infraction (Ticket) to the owner and/or person in charge. Except as provided in Section 04-0216-06.070, the violation of any provision of these regulations is designated as a civil infraction pursuant to Chapters 70.160 and 7.80 RCW, Civil Infractions.
- B. The Health Officer may issue a notice of civil infraction pursuant to Chapter 70.160 RCW and Chapter 7.80 RCW if the Health Officer has reasonable cause to believe that the person has violated any provision of these regulations or has not corrected the violation as required by a written notice and order to correct violation. Civil infractions shall be issued, heard and determined as described in Chapter 7.80 RCW, and any applicable court rules.

7. Permit Violation, Suspension and Revocation

- A. Permit Violation. Any violation of a permit requirement issued pursuant to these regulations shall be a violation of these regulations.
- B. Suspension of Food Service Establishment Permit. The Health Officer may temporarily suspend any permit issued after the fourth violation of these regulations has been documented by the Health Officer.
 - 1. Failure to comply with any notice and order to correct violation issued pursuant to these regulations;
 - 2. Permit suspension shall be carried out through the notice and order to correct violation provisions specified in Section 04-0216-06.090, and the suspension shall be effective upon service of the notice and order to correct violation upon the owner or person in charge. The holder or operator may appeal such suspension as provided in Section 04-0216-06.090 of these regulations.
- C. Revocation of Permits.
 - 1. The Health Officer may permanently revoke the Food Service Establishment permit after the fifth violation of these regulations has been documented.
 - 2. Such permit revocation shall be carried out through the notice and order to correct violation provisions specified in Section 04-0216-06.090 and the revocation shall be effective upon service of the notice and order to correct violation upon the holder or operator. The holder or operator may appeal such revocation, as provided in Section 04-0216-06.090 of these regulations.

3. A permit may be suspended pending its revocation or a hearing relative to revocation pursuant to the provisions of Section 04-0216-06.090

8. Permit Appeal

- A. Subject to Appeal. Any denial, suspension or revocation of a Food Service Establishment permit by the Health Officer may be appealed.
- B. Appellant Defined. The appellant shall be the applicant for a Food Service Establishment who appeals a decision denying, suspending or revoking a food service permit.
- C. Appeal Procedure. The appeal procedure shall be carried out through the appeals process specified in Section 04-0216-06.090.

9. Noncompliance Fees

- A. Pursuant to the most current Public Health fee schedule adopted by the Board of Health, Public Health may assess a noncompliance fee to an owner or person in charge for the following:
 1. Jefferson County Public Health oversight and review required as a result of the Health Officer's determination that a owner or person in charge is not in compliance with these regulations and has not met the compliance dates specified in a notice and order to correct violation; or
 2. Second and subsequent re-inspections conducted by Jefferson County Public Health in response to the owner or person in charge not complying with the requirements outlined in a notice and order to correct violation.
- B. Whenever a noncompliance fee is assessed by Jefferson County Public Health, the fee shall be due and payable thirty (30) days after receipt of the invoice by the owner or person in charge.

10. Other Legal or Equitable Relief.

Notwithstanding the existence or use of any other remedy, the Health Officer may seek legal or equitable relief to enjoin any acts or practices or abate any conditions that constitute or will constitute a violation of this ordinance, or rules and regulations adopted under it, or any state health law or regulation, or that otherwise threatens public health.

04-0216-06.090 – REBUTTALS

Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the local health jurisdiction in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance

An application for rebutting the Presumptively Reasonable Distance requirement may be submitted to the Jefferson County Public Health Administrator for consideration. The application must be accompanied by all of following:

- A. An application fee as established in the most recent Public Health fee schedule approved by Jefferson County Board of Health.
- B. A written description of the proposed reduction in the separation distance requirement.
- C. A detailed map showing the specific area to be considered for a reduced separation distance along with the location of all entrances, exits, windows that open, and ventilation intakes within 25 feet of the proposed smoking area.
- D. A written explanation by the applicant describing why the presumptively reasonable distance of 25 feet cannot be met and why consideration for a reduced separation distance is necessary.
- E. A written justification from the applicant describing the clear and convincing evidence they have gathered that demonstrates that given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes or other factors, smoke will not infiltrate into the facility.
- F. A written explanation from the applicant describing how they will monitor the effectiveness of the reduced distance in keeping smoke from infiltrating into the facility, and what action they will take if smoke is determined to be entering the facility at a future time.

The application for reduction in the twenty-five foot requirement applies only to the area addressed in the application and not to the entire structure or any other area near or around the facility.

Any approval taken on the application submitted will need to endure a reasonable test of time and if future complaints are received against the facility because of second hand smoke, further inspections may be warranted and possible modification or revocation of the approval may be required. At the time of ownership change or if any structural changes to the building, have occurred an approved rebuttal is null and void and another rebuttal application must be submitted to JCPH for review.

04-0216-06.100 – APPEAL

1. Appeal of Public Health Action – Health Officer Administrative Hearing.

Any person aggrieved by the contents of a notice and order to correct violation issued under this regulation, or any enforcement action conducted by Jefferson County Public Health under this regulation, may request, in writing, a hearing before the Health Officer or his or her designee. For the purposes of this Chapter, the hearing before the Health Officer (or his or her designee) shall be known as the “administrative hearing.” The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of Jefferson County Public Health. Such request shall be presented to the Health Officer within ten (10) business days of the action appealed; except in the case of a suspension of a food service establishment permit, the request for a hearing must be made within five (5) business days. Upon receipt of such request together with hearing fees, the Health Officer shall notify the person of the time, date, and place of such hearing, which shall be set at a mutually convenient time not less than five (5) business days, or more than thirty (30) business days from the date the request was received. The Health Officer will issue a decision upholding or reversing Jefferson County Public Health’s action. The Health Officer may require additional actions as part of the decision.

2. Appeal of Administrative Hearing.

A. Any person aggrieved by the findings, conclusions of law or mandated actions that arise or result from an administrative hearing shall have the right to appeal the matter by requesting a hearing before the Board of Health. Such notice of appeal shall be in writing and presented to the Health Officer within five (5) business days of the findings, conclusions of law and mandated actions from the administrative hearing. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Health Officer, and which shall be accompanied by a fee as established in the current Public Health fee schedule. The appellant and the Health Officer may submit additional information to the Board of Health for review.

B. The notice and order to correct violation shall remain in effect during the appeal. Any person affected by the notice and order to correct violation may make a written request for a stay of the decision to the Health Officer within five (5)

business days of the Health Officer's decision. The Health Officer will grant or deny the request within five (5) business days.

- C. Upon receipt of a timely written notice of appeal together with the hearing fee, the Health Officer shall set a time, date, and place for the requested hearing before the Board of Health and shall give the appellant written notice thereof. Such hearing shall be set at a mutually convenient time not less than five (5) business days or more than thirty (30) business days from the date the appeal was received by the Health Officer.
- D. Any decision of the Board of Health shall be final and may be reviewed by an action filed in superior court. Any action to review the Board's decision must be filed within thirty (30) business days of the date of the decision.

3. Right to appeal decision of the Board of Health.

A person or entity aggrieved by a decision of the Board of Health, which is defined to include one or more of the following: 1) findings of fact, 2) conclusions of law or 3) mandated actions that the Board of Health may promulgate or issue with respect to issues of law and fact brought before him or her on appeal from an "administrative hearing" has the right of appeal to Superior Court as described within Chapter 34.05 RCW, the Administrative Procedures Act.

04-0216-06.110 -- SEVERABILITY

Should any paragraph, phrase, sentence or clause of these regulations be declared invalid or unconstitutional for any reason, the remainder of these regulations shall not be affected thereby.

APPENDIX A. REFERENCES

The following is a list of Federal, State, and local laws, regulations, and documents referenced in Jefferson County Board of Health Ordinance 2006-XX, *Secondhand Smoke Enforcement*

Revised Code of Washington (RCW), Chapters: 70.160, and Rebuttal Procedures

ADOPTED this 16th day of February 2006

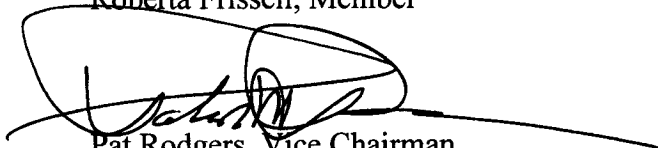
JEFFERSON COUNTY BOARD OF HEALTH

Excused


Geoff Masci, Member

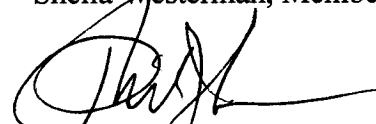

David Sullivan, Chairman


Roberta Frissell, Member

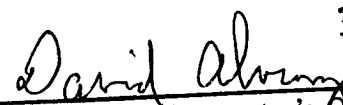

Pat Rodgers, Vice Chairman


Jill Buhler, Member


Sheila Westerman, Member


Phil Johnson, Member

Approved as to form only:

 3/1/06
Jefferson Co. Prosecutor's Office