

# **A Regulation Eliminating Smoking in Public Places and Places of Employment.**

## **Sec. 1000. Title**

This article shall be known as the **Fayette County Clean Air Regulation of 2008** (As Amended December 3, 2019)

## **Sec. 1001. Findings and Purpose**

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is (a) a cause of numerous diseases in otherwise healthy nonsmokers and (b) a major contributor to indoor air pollution; and (c) that children, elderly people, and individuals with cardiovascular and/or respiratory diseases are at special risk.

The Environmental Protection Agency (EPA) has classified secondhand smoke as a Group A Carcinogen, known to cause cancer in humans. Accordingly, the Fayette County Board of Health finds and declares that the purpose of this Regulation is to (1) protect the public health and welfare by prohibiting smoking in public places and by regulating smoking in places of employment, (2) recognize that where the need to breathe smoke-free air conflicts with the desire to smoke, the need to breathe smoke-free air shall have priority, and (3) reduce the likelihood of the population, particularly adolescents, in the initiation of nicotine use.

In attempting to minimize the effects of tobacco smoke on the general public in enclosed public places, the regulations of [boards of health] address a serious health issue which the Legislature has recognized. Based upon the foregoing observations, we find that clean indoor air regulations of local boards of health that place restrictions on smoking in enclosed public places (1) are consistent with the findings of the Legislature "that smoking may cause lung cancer, heart disease, emphysema and other serious health problems," (2) advance the legislatively prescribed public policy "to provide the state with a citizenry free from the use of tobacco," and (3) fall within the bounds of authority granted by the Legislature to such boards....." Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.

Electronic smoking devices (ESD), commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid that typically contains nicotine, heated through an electronic ignition system. ESD emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. 1 The January 2018 National Academies of Sciences, Engineering, and Medicine publication states that there is conclusive evidence that in addition to nicotine, most electronic smoking devices contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine in indoor environments. Studies show that people exposed to ESD aerosol absorb nicotine (measured as cotinine) at levels comparable to passive smokers. Many of the elements identified in the aerosol are known to cause respiratory distress and disease. ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings, especially cinnamon, show increased oxidative stress and inflammatory responses. 2 Their use creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. The World Health

Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA) recommend that ESDs not be used in smoke free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke free laws. 3

1. Fuoco, F.C.;Buonanno, G.;Stabile, L.; Vigo, P., "Influential parameters on particle concentration and size distribution in the mainstream of e-cigarettes," Environmental Pollution 184:523-529, January 2014.
2. Lerner CA, Sundar IK, Yao H, Gerloff J, Ossip DJ, McIntosh S, et al. "Vapors Produced by Electronic Cigarettes and E-Juices with Flavorings Induce Toxicity, Oxidative Stress, and Inflammatory Response in Lung Epithelial Cells and in Mouse Lung" Plos ONE 10(2): e0116732, February 6, 2015.
3. World Health Organization (WHO), "Electronic nicotine delivery systems," World Health Organization (WHO), 2014.

## **Sec. 1002. Definitions**

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

- A. "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.
- B. "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 non-profit entity.
- C. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- D. "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.
- E. "Healthcare Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitations hospitals, weight control, homes for aging, or chronically ill, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialist

within these professions. "Healthcare Facility" includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

F. "Place of Employment" means any 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 classrooms, private offices, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

G. "Public Place" means any 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, bars, gaming facilities, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, and waiting rooms and outdoor service lines and public parks. This shall include all rooms and offices of any agency that receives any monetary support from Fayette County.

H. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other establishment which gives or offers for sale food or beverage to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

I. "Service Line" means any 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.

J. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, hookah, weed, plant or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.

K. "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

L. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys 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.

M. "Retail Tobacco 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.,

### **Sec. 1003. Application of Article to County/City Owned Facilities.**

All facilities including buildings, vehicles owned or operated by the City or County or any agency that receives any monetary support from Fayette County shall be subject to the provisions of this regulation.

### **Sec. 1004. Prohibition of Smoking in Public Places**

- A. Smoking shall be prohibited in all enclosed public places within Fayette County, including, but not limited to, the following places:
  1. Elevators.
  2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
  3. Buses, taxicabs, airports and other means of public transit under the authority of Fayette County, and ticket, boarding, and waiting areas of public transit depots.
  4. Service lines.
  5. All 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. Restaurants.
  8. Public areas of aquariums, galleries, libraries and museums.
  9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
  10. Sports arenas and convention halls
  11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of Fayette County or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the County. This shall include any agency that receives any monetary support from Fayette County.
  12. Waiting rooms, hallways, wards, private and semiprivate rooms and of any healthcare facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices.

13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
14. Polling places.
15. Auction houses.
16. Enclosed shopping malls including indoor flea markets.
17. All fire department facilities.
18. All emergency medical services facilities.

B. Smoking shall be prohibited in the following outdoor public places within Fayette County:

1. Outdoor service lines, ticketing areas and boarding areas.
2. Concourse areas of stadiums and outdoor seating of recreational venues.
3. Outdoor serving areas of restaurants.
4. All outdoor property, including parking lots, and sidewalks of any healthcare facility.
5. Playgrounds and pavilions in public parks.

C. Designated Outdoor Smoking Areas:

Designated smoking areas shall occur at a reasonable distance of 15 feet or more outside any entrance, exit, or ventilation units of any buildings or enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.

D. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment, facility or property as a nonsmoking establishment.

E. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

#### **Sec. 1005. Prohibition of Smoking in Places of Employment**

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.
- B. Within 30 days of the effective date of this article, each employer having an enclosed place of employment located within Fayette County 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, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

- C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

#### **Sec. 1006. Where Smoking is Not Regulated**

- A. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from Section 1005:
  1. **Private residences, except when used as a childcare, adult daycare, health care facility, or homes that are registered with West Virginia Department of Health as personal or residential board facility.**
  2. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
  3. **Bingo halls distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003**
  4. **Residents, prior to September 4, 2003, of personal care home, who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003**
  5. **Free standing bars, bowling establishments, video lottery rooms, retail tobacco stores, retail vape shops, and fraternal organization facilities with the following restrictions:**
    1. **No one under the age of 18 would be permitted on premises, unless the establishment has declared itself totally smoke free.**
    2. **Bowling establishments to designate a time slot for minors that would begin 8 hours after the last smoker was in the building, and ban smoking any time a minor is in the building.**

#### **Sec. 1007. Posting of Signs**

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building or other area where smoking is prohibited by this article, 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 Article shall have posted at every entrance a conspicuous sign 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 article by the owner, operator, manager or other person having control of such area.

Sec. 1007. Posting of Signs (Continued)

D. Where smoking is not regulated, this sign must be prominently posted warning that the patron is entering an establishment that may harbor dangerous second hand smoke:

# WARNING!

## NO ONE UNDER THE AGE OF 18 YEARS ALLOWED

*You are entering a building that allows smoking, vaping, or the use of e-cigarettes* The Surgeon General and CDC have determined that smoking and second hand smoke is a health hazard and can cause cancer, heart and lung disease. The EPA has designated second hand smoke as *a known cancer causing agent.*

*By entering this establishment, you as an adult, are accepting full responsibilities for any health consequences that may occur in regard to breathing tobacco smoke.*

### **Sec. 1008. Enforcement**

- A. Enforcement of this article shall be implemented by the Fayette County Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the County of Fayette.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Fayette County Health Department.
- D. The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this regulation.
- E. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

### **Sec. 1009. 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 article.

### **Sec. 1010. Violations and Penalties**

Willful violation of this Clean Air Regulation is an unlawful act.

Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:

- (1) Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this clean indoor air regulation, or
- (2) Knowingly violate any other provision of this clean indoor air regulation.

Any person who smokes where smoking is prohibited with knowledge that he or she is in a non-smoking area commits a willful violation of this clean indoor air regulation.

Penalties:

The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under

W.VA. Code 16-2-15 against any person who willfully violates this clean indoor air regulation. Enforcement through civil process, includes, but is not limited to a petition for injunctive relief.

Any person who willfully violates this clean indoor air regulation, may be charged with a misdemeanor under W.Va. Code 16-2-15 and, upon conviction, be subject to a monetary

fine. At the time of the adoption of this Clean Air Regulation, West Virginia Code 16-2-15 provided as follows.

**Chapter 16-2-15. Obstructing local health officers and others in the enforcement of public health laws; other violations, penalties.**

Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars.

Any person who willfully violates any of the provisions of this article, or any of the rules or orders adopted or issued pursuant to the provisions, for which a penalty is not otherwise provided, is guilty of a Misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred dollars and Not more than one thousand dollars.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of Provisions of this article.

**Sec. 1011. Public Education**

The Fayette County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance 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. 1012. Other Applicable Laws**

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

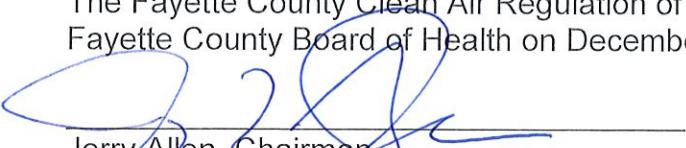
**Sec. 1013. Severability**

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 invalid provision or application, and to this end the provisions of this article are declared to be severable.

**Sec. 1014. Effective Date**

This article shall become effective October 1, 2008

The Fayette County Clean Air Regulation of 2008 was revised and approved by the Fayette County Board of Health on December 3, 2019.

  
Jerry Allen, Chairman  
Fayette County Board of Health

1/6/20  
Date

STATE OF WEST VIRGINIA  
COUNTY OF FAYETTE

I, Misty Hysell, a notary public in and for said state, do hereby certify that Jerry Allen whose name is signed to the writing above, has this day acknowledged the same before me.

Given under my hand this 6<sup>th</sup> day of January, 2020

My commission expires July 20 2023

Misty Hysell  
Notary Public

