



Board of Health

Clean Indoor Air Regulation

As of July 1, 2008

Section 1000. Title

This Regulation shall be known as the Kanawha-Charleston Clean Indoor Air Regulation of 2007.

Section 1001. Authority

This Clean Indoor Air Regulation is adopted in accordance with the authority contained in West Virginia Code § 16-2-11 et seq.

Section 1002. Findings and Purpose

The Kanawha-Charleston Board of Health does hereby find:

The United States Surgeon General and numerous other credible authorities and medical researchers have determined: (a) that involuntary inhalation of secondhand or environmental tobacco smoke can cause or contribute to numerous serious health problems and diseases, including heart disease, cancer and respiratory illness, and acute episodes of decreased respiratory function, including broncho-constriction and broncho-spasm in healthy nonsmokers; (b) that the presence of secondary tobacco smoke is a major contributor to indoor air pollution; (c) that children, elderly people and individuals with cardiovascular and/or respiratory disease, including asthmatics and those with obstructive airway disease are at special risk to exposures from secondhand tobacco smoke; (d) that the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke, and smoking bans remain the most viable and cost-effective method of protecting patrons.

Accordingly, the purpose of this regulation is to: (a) protect the health of the public by minimizing exposure of individuals to a proven harmful environmental toxin, i.e. secondhand smoke, while they engage in public indoor commerce; and (b) direct and/or strongly encourage the proprietors of public places of indoor commerce to provide a smoke-free environment to minimize public exposure to this harmful toxin.

Section 1003. Definitions

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

1. "Bar" means an area which is primarily devoted to the serving of alcoholic beverages for consumption by customers and guests on the premises and in which the serving of food is only incidental to the consumption of such beverage. A "Bar" for the purposes of this definition must have eighty percent (80) or greater of its total sales, excluding lottery sales, in alcoholic beverages.
2. "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.

3. "Complete Physical Separation" means enclosure of all space between the floor and ceiling on all sides by solid walls or windows with any ingress or egress occurring through self-closing doors which provide an air seal to the maximum extent possible.
4. "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 non-profit entity.
5. "Employer" means any person, partnership, corporation, association, including a municipal corporation or non-profit entity, who employs the services of one or more individual persons.
6. "Enclosed Area" means all space between the floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) 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.
7. "Grocery Store" means any supermarket, convenience store or other retail food production and marketing establishment.
8. "Non-Profit Entity" means any entity whose operations are not committed to private financial gain. A public agency is not a "non-profit entity" within the meaning of this section.
9. "Place of Employment" means any area under the control of a public or private employer where employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
10. "Proprietor" means any owner, operator, manager or other person having control of a public place, including, but not limited to, buildings, businesses, establishments, stores and facilities.
11. "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, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, bingo halls and waiting rooms. A private residence is not a "Public Place."

12. "Public Transit" means any means of conveyance or travel available to members of the public for a fee, including but not limited to. taxi-cabs, buses, limousines and chartered planes.
13. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as, kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "Restaurant" shall not include a cocktail lounge or tavern which qualifies as a "Bar" as defined in Section 1003.1.
14. "Retail Store" means any establishment that sells goods or services directly to members of the general public including, but not limited to specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners and laundromats.
15. "Retail Tobacco Store" means any establishment used primarily for the sale of tobacco products and in which the sale of other products is merely incidental.
16. "Secondhand Smoke" means environmental tobacco smoke that could be voluntarily or involuntarily inhaled by individuals who did not generate that smoke.
17. "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.
18. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other smoking equipment containing burning tobacco in any manner or in any form.
19. "Sports Arena" means a place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sporting events and includes, but is not limited to, a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, baseball and football stadiums and roller/ice rink.

Section 1004. Application of Regulation to *Publicly Owned Facilities*

All enclosed facilities including buildings and vehicles, owned and occupied by Kanawha County, or any municipality located in Kanawha County, shall be subject to the provisions of this regulation.

Section 1005. Prohibition of Smoking in Public Places

A. Except as provided in Section 1008 of this regulation, smoking shall be prohibited in all enclosed public places within Kanawha County, including, but not limited to, the following places:

1. All areas available to and customarily used by the general public in all businesses, governmental/quasi-governmental agencies and non-profit entities patronized by the

- public, including, but not limited to, attorneys offices and other offices, banks, laundromats, hotels and motels.
2. Service lines, restrooms, lobbies, elevators, enclosed stairwells and parking garages, reception areas, hallways and any other common-use areas.
 3. All means of public transit, including, but not limited to, transit vehicles and associated ticket, boarding, transport and waiting areas.
 4. Retail stores and grocery stores.
 5. Restaurants, including outdoor seating areas of restaurants.
 6. Every room, chamber and place of meeting, polling or public assembly, including school buildings, under the control of any board, council, commission, committee, including joint committees, or political subdivision of the State, during such time as a public meeting or business is in progress.
 7. All patient rooms, waiting rooms, examination rooms and other areas in health facilities, including, but not limited to, hospitals, clinics, pharmacies, physical therapy facilities, nursing homes, doctors' offices and dentists' offices.
 8. Enclosed shopping malls.
 9. Private and public school buildings and dormitories, child care and adult care facilities.
 10. Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, emergency shelters, residential board and care establishments and other multiple-unit residential facilities.
 11. Sports arenas, bowling facilities, and the grandstands, locker rooms, restrooms, and vending areas, service lines and playing areas of outdoor stadiums and ballparks.
 12. Stage and movie theaters, aquariums, amphitheaters, galleries, libraries and museums.
 13. Polling places.
 14. Bingo halls.
 15. Fire departments, rescue squads or other community buildings.
 16. Auction houses and indoor flea markets.
- B. 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 or facility as a nonsmoking establishment.

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

Section 1006. Prohibition of Smoking in Places of Employment

Except for employers whose businesses are described in a category found in Section 1008 of this regulation, it shall be the responsibility of employers to provide a smokefree workplace for all employees to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications.

Section 1007. Reasonable Distance

To insure tobacco smoke does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems or by any other means, designated smoking areas shall be located at a reasonable distance of at least fifteen (15) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where smoking is prohibited, if such space is subject to the control of the proprietor, owner, operator or manager for the building or other area where smoking is prohibited.

Section 1008. Where Smoking Not Regulated

- A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from Sections 1005 and 1006 of this regulation:
1. Bars which meet the requirements of Section 1003.1 of this regulation. Provided, however, after January 1, 2004, in order to qualify for a bar exemption, bars must have complete physical separation and separate ventilation from contiguous restaurants, businesses and residential quarters. As of July 1, 2008, this exemption is rescinded and bars will be considered fully covered under Sections 1005 and 1006.
 2. Private residences, except when used as a child care, adult day care or health care facility.
 3. No more than twenty-five percent (25) of hotel and motel rooms rented to guests. In all hotel and motel facilities constructed after the effective date of this regulation, designated rooms shall be completely enclosed and separately ventilated.
 4. Completely enclosed and separately ventilated retail tobacco stores.
 5. Dog and horse tracks, their associated contiguous gambling facilities, and other gaming facilities licensed by the West Virginia Lottery Commission and/or the West Virginia Racing Commission. Provided, however, to qualify for a dog and horse track and gaming exemption, the restaurant area, counting rooms, restrooms, kitchens, store rooms, administrative offices, barns, and kennels shall be smoke-free, with complete enclosure and separate ventilation provided for the restaurant area by January 1, 2004. As of July 1, 2008, this exemption is rescinded and the facilities covered by this paragraph will be considered fully covered under Sections 1005 and 1006.

6. Outdoor areas of places of employment.
- B. To qualify for exemption under this section, facilities identified in A.1., 4. and 5. above must restrict admission to only individuals 18 years of age or older.
- C. Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Section 1009. Posting of Signs

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

HEALTH WARNING

**SMOKING IS PERMITTED WITHIN THIS FACILITY. YOU WILL
BE EXPOSED TO SECONDHAND SMOKE. SUCH EXPOSURE
CAN CAUSE OR CONTRIBUTE TO CANCER, HEART
DISEASE, RESPIRATORY ILLNESS AND OTHER
SERIOUS HEALTH PROBLEMS.**

The lettering of such signage must be bold and at least one (1) inch in height and one-quarter (1/4) of an inch in width with the heading at least two (2) inches in height and three-eighths (3/8) of an inch in width.

Section 1010. Enforcement

- A. Although smoking regulations are primarily self-regulating through public pressure, enforcement of this Regulation shall be the ultimate responsibility of the Kanawha-Charleston Board of Health, which may implement enforcement through civil process to obtain injunctive relief or by a criminal complaint under West Virginia Code § 16-2-15.
- B. Any owner, operator or employee of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.

- C. Any citizen who desires to register a complaint under this regulation may do so with the Kanawha-Charleston Board of Health.
- D. Sanitarians employed by the Kanawha-Charleston Board of Health shall, while an establishment is undergoing an otherwise mandated inspection, inspect for compliance with this regulation.

Section 1011. Violations and Penalties

- A. It shall be unlawful for any person who owns, operates, manages or otherwise controls the use of any premises subject to regulation under this regulation 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 regulation.
- C. Any person who willfully violates any provision of this regulation may be prosecuted for a violation of Chapter 16 of the West Virginia Code. If found guilty, the penalty will be as set forth by West Virginia Code § 16-2-15 which, at the time of promulgation of this regulation states:

16-2-15. Obstructing local health officers and others in the enforcement of public health; other violations and 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. (2000, c. 130.)

Section 1012. Public Education

The Kanawha-Charleston Health Department shall engage in a continuing program to explain the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with the regulation. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

Section 1013. Non-Retaliation

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smokefree environment afforded by this regulation.

Section 1014. Other Applicable Laws

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable federal, state or local law or ordinance.

Section 1015. Severability

If any provision, clause, sentence or paragraph of this regulation, or the application thereof to any person or circumstance, 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.

Section 1016. Effective Date

This regulation shall be effective ninety (90) days from and after the date of its adoption.

Section 1017. Repeal and Replacement of Former Regulation

This regulation repeals and replaces the Kanawha-Charleston Board of Health Clean Indoor Air Regulation effective May 22, 1995, and revised July 20, 2000, and April 3, 2003.

For More Information, Contact:



P.O. Box 927
Charleston, WV 25323
(304) 348-8050
kanawhalhd@wvvdhr.org
www.kchdww.com

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KANAWHA-CHARLESTON
HEALTH DEPARTMENT

Board of Health

Indoor Vaping Regulation

As of January 16, 2020

Arthur B. Rubin DO

Arthur B. Rubin, DO
President

January 16, 2020

Date

KANAWHA-CHARLESTON HEALTH DEPARTMENT

A REGULATION ELIMINATING ELECTRONIC SMOKING DEVICES IN WORKPLACES AND PUBLIC PLACES

Sec. 1000. Title

This regulation shall be known as the Kanawha County and City of Charleston Electronic Smoking Device Regulation of 2020. This regulation does not supersede the existing Kanawha County and City of Charleston Clean Indoor Air Regulation of 2008.

Sec. 1001. Authority

This regulation is adopted in accordance with the authority contained in West Virginia Code § 16-2-11 et seq.

Sec. 1002. Findings and Purpose

The Kanawha-Charleston Board of Health does hereby find that:

According to the Centers for Disease Control (CDC), Electronic cigarettes are not safe for youth, young adults, pregnant women, or adults who do not currently use tobacco products. Additionally, the CDC states that there is no safe nicotine delivery product, and all nicotine delivery products carry a risk.

The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially 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.

E-cigarettes are now the most commonly used nicotine delivery product among youth, surpassing conventional cigarettes in 2014. E-cigarette use is strongly associated with the use of other tobacco products among youth and young adults, including cigarettes and other combustible tobacco products. E-cigarette use among youth and young adults has become a public health concern.

After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." " E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear like the smoke emitted by traditional tobacco products.

Accordingly, the Kanawha-Charleston Board of Health finds and declares that the purposes of this regulation are (1) to protect the public health and welfare by prohibiting vaping in public places and places of employment; and (2) to guarantee the right of individuals who do not vape to breathe vape free air, and to recognize that the need to breathe vape free air shall have priority over the desire to vape, and (3) to protect the public health and welfare by prohibiting vaping and the use of electronic cigarette devices in public places and places of employment, (4) discourage youth from initiation of vaping thereby developing a nicotine addiction, (5) facilitate nicotine cessation by active smokers.

According to the Surgeon General of the United States, E-cigarettes are a rapidly emerging and diversified product class, these devices typically deliver flavorings, and other additives to users via an inhaled aerosol. These devices are referred to by a variety of names, including "e-cigs," "e-hookahs," "mods," "vape pens," "vapes," and "tank systems."

Sec. 1003. Definitions

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. "Electronic Smoking Device (E-Cigarette)" means any electronic 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, e - hookah, vape pen or under any other product name or descriptor.
3. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
4. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

5. "Enclosed Area" means all space between a floor and ceiling which is under roof and 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. "Healthcare Facilities" 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, rehabilitation hospitals, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. "Healthcare Facility" includes all waiting rooms, hallways, private rooms, semi-private rooms, and any adjacent outdoor property under their control.
7. "Healthcare Facilities" does not include Personal Care Homes, Assisted Living Facilities or Residential Board Facilities where they are grandfathered under the West Virginia Supreme Court of Appeals ruling of December 2, 2003.
8. "Grocery Store" means any supermarket, convenience store or other retail food production and marketing establishment.
9. "Non-Profit Entity" means any entity whose operations are not committed to private financial gain. A public agency is not a "non-profit entity" within the meaning of this section.
10. "Place of Employment" means any area under the control of a public or private employer where employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, 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.
11. A "private function" shall be defined as a function in which no fee is charged and no tickets are sold, and no public announcements are made to the event and /or function.
12. "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, bars, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, outdoor service lines and bingo halls. A private residence is not a "public place."

13. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
14. "Retail vaping Store" means a retail store utilized primarily for the sale of electronic cigarettes and vaping products or accessories, and in which the sale of other products is merely incidental.
15. "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.
16. "Vaping" means inhaling, exhaling, burning or carrying any electronic cigar, e-cigarette, e-pipe, e - hookah, vape pen or under any other product name or descriptor.
17. "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.

Sec. 1004. Application of this Regulation to Kanawha County or City of Charleston Owned Facilities

All enclosed facilities including buildings and vehicles owned by Kanawha County or the City of Charleston shall be subject to the provisions of this regulation.

Sec. 1005. Prohibition of Vaping in Public Places

- A. Vaping shall be prohibited in all enclosed public places within Kanawha County or the City of Charleston including, but not limited to, the following places:
 1. 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, motels, bars and video lottery rooms.
 2. Elevators, service lines, restrooms, lobbies, reception areas, hallways, enclosed stairwells and any other common-use areas.
 3. All means of public transit, including, but not limited to buses, taxicabs, and other means of public transit under the authority of Kanawha County. This includes public areas for ticketing, boarding, and waiting areas of public transit depots.
 4. Retail and grocery stores.

5. Restaurants, including outdoor seating areas.
6. Public areas of aquariums, galleries, libraries and museums.
7. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
8. Sports arenas and convention halls, including bowling facilities.
9. 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 Kanawha County or the City of Charleston 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 Kanawha County.
10. Waiting rooms, hallways, wards, private and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, and any other health care providers.
11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
12. Polling places.
13. Bingo halls that distribute less 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.
14. Fire departments, rescue squads or other community buildings.
15. Auction houses, indoor flea markets and enclosed shopping malls.
 1. 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/nonvaping establishment.
 2. In any dispute arising under this regulation, the health concerns of the nonsmoker/nonvaping shall be given precedence.

Sec. 1006. Prohibition of Vaping in Places of Employment

1. It shall be the responsibility of employers to provide a "vape" free workplace for all employees.
2. Within 30 days of the effective date of this regulation, each employer having an enclosed place of employment located within Kanawha County or the City of Charleston, shall adopt, implement, make known and maintain a written vaping policy which shall contain the following requirements: Vaping 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.
3. The electronic smoking device regulation shall be communicated to all employees within three (3) weeks of its adoption.
4. All employers shall supply a written copy of the electronic smoking device regulation upon request to any existing or prospective employee.

Sec. 1007. Reasonable Distance

To ensure that aerosolized vaping product does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems or by any other means, designated vaping/smoking areas shall be located at a reasonable distance of at least fifteen (15) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where vaping is prohibited, if such space is subject to the control of the proprietor, owner, operator or manager for the building or other area where vaping is prohibited

Sec. 1008. Where Vaping is Not Regulated

A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from Sec.1005 and 1006 of this regulation:

1. Private residences, except when used as a childcare, adult day care or health care facility, or homes that are registered with West Virginia Department of Health as a Personal Care Home or Residential Board Facility.
2. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
3. Bingo halls that 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 homes, assisted living facilities or residential board facilities, 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. Outdoor areas of places of employment except those covered in Section 1005 of this regulation.
 - A. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 1009. Posting of Signs

1. "No Vaping" signs or the international "No Vaping" symbol (consisting of a pictorial representation of a burning cigarette or electronic 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 vaping is prohibited by this regulation, by the owner, operator, manager or other person having control of such building or other area.
2. Every public place where vaping is prohibited by this regulation shall have posted at every entrance a conspicuous sign clearly stating that vaping and smoking are prohibited.

Sec. 1010. Enforcement

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

Sec. 1011. Violations and Penalties

1. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this regulation to fail to comply with any of its provisions.
2. It shall be unlawful for any person to "vape" in any area where electronic cigarette use is prohibited by the provisions of this regulation.
3. Any person who violates any provision of this regulation shall be guilty of a misdemeanor under Chapter 16 of the West Virginia State Laws. Penalty will be as set forth by Chapter 16-2-15 of the West Virginia State Laws which states:

§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 regulation, 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 the provisions of this regulation.

Sec. 1012. Public Education

The Kanawha-Charleston 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. 1013. Non-retaliation

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. 1014. Other Applicable Laws

This regulation shall not be interpreted or construed to permit vaping 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


This regulation shall be effective thirty (30) days from and after the date of its adoption.
Adopted

Kanawha-Charleston Board of Health

For More Information, Contact:



P.O. Box 927
Charleston, WV 25323
(304) 348-8050
www.kchdww.org


Arthur B. Rubin, DO

State of West Virginia, County of Kanawha to wit: Subscribed and sworn to
before me this 16th day of January 2020
My Commission expires June 29, 2022

I, VERA J. McCORMICK do hereby certify
that this is a true copy from the record.
Teste: VERA J. McCORMICK
Kanawha County Commission

Date 1-23-20 By Vera J. McCormick
Clerk



