

MASON COUNTY CLEAN AIR REGULATION OF 2016

A Regulation Prohibiting Smoking in All Workplaces and Public Places.

By

MASON COUNTY BOARD OF HEALTH

SECTION 1000. TITLE

This Regulation shall be known as the Mason County Clean Air Regulation.

SECTION 1001. FINDINGS AND PURPOSE

The United States Surgeon General and other authoritative public health authorities have determined that involuntary inhalation of tobacco smoke (a) is a cause of numerous diseases in healthy non-smokers; (b) is a major contributor to indoor air pollution; (c) places children, unborn children of pregnant women, elderly people, and individuals with cardiovascular and/or respiratory disease at special risk; (d) is a trigger for acute episodes of respiratory distress and myocardial infarction; (e) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers; (f) burdens the health care system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing the public and private expenditures required for the treatment; (g) reduces the life expectancy of persons consistently exposed to secondary smoke and (h) causes substantial losses in productivity through smoking related absences from work and school. (I) Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. 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." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," *Food and Drug Administration (FDA)*, July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.... "In attempting to minimize the effects of tobacco smoke on the general public in 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....."

Accordingly, the purposes of this Regulation are:

1. to protect the public health and welfare by prohibiting smoking in public places and places of employment.
2. to 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,
3. to facilitate smoking cessation by active smokers and
4. to discourage non-smokers from taking up the habit and thereby developing a nicotine addiction.

SECTION 1002. DEFINITIONS

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

- a. "Bar" means any establishment or part of establishment that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premise.
- b. "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.
- c. "Employee" means any person employed by an employer for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- d. "Employer" means any entity or person who employs the paid or volunteer services of one or more persons.
- e. "Enclosed Area" means all space between a floor and ceiling which is enclosed, that is bounded on at least two sides by walls, doorways or windows, whether open or closed. A wall includes any retractable divider,

garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

- f. "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, rehabilitation hospitals, nursing homes, weight control, 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 any adjacent outdoor property under its control.
- g. "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.
- h. "Hotel" means any facility, building or buildings, publically or privately owned (including a facility located in a state, county or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to boarding houses, hotels, motels, inns, courts, condominiums, city parks offering accommodations. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or where a university or college housing unit provides sleeping accommodations for the general public for a consideration, the term "hotel" shall, if otherwise applicable apply to such accommodations for the purpose of this regulation.
- i. "Place of Employment" means any enclosed area under the control of a public or private employer that employees are required to enter, leave or pass through during the course of employment, including private offices; work areas; restrooms; conference and classrooms; break rooms; cafeterias; and other common areas. A private residence, unless used to provide licensed or child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment. Vehicles provided by an employer for use by employees, during the course of employment shall be considered as places of employment for purposes of these regulations.

- j. "Private Club" means an entity falling within the definition of Private Club as set forth in Section 60-7-2 of the West Virginia Code, for purposes of State Control of Alcoholic Liquors. Private Club also means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.
- k. "Public Place" means any area to which the public is invited or in which the public is permitted, regardless of whether the building is owned in whole or in part by private persons or governmental entities. A "public place" includes, but is not limited to hospitals, hotel and motels, restaurants, retail stores, offices, bingo operations, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, educational facilities, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, bars, private clubs, gaming facilities, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, public and private educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, attorney's and doctor's offices. A private residence is not a "public place" unless used to provide licensed childcare, foster care, adult care, or other similar social service care on the premises. This shall include all rooms and offices of any agency that receives monetary support from Mason County.
- l. "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.
- m. "Retail Store" means any establishment that sells goods or services directly to members of the general public including but not limited to grocery stores, specialty stores, department stores, pharmacies, banks, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners, and laundromats.
- n. "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.

- o. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an electronic cigarette which creates a 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.
- p. "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.

SECTION 1003. REGULATION OF SMOKING IN PUBLIC PLACES

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

- 1. All means of public transit including taxis and buses, and all areas, including ticket, boarding and waiting areas.
- 2. Public areas of aquariums, galleries, libraries and museums.
- 3. Child care and adult day care facilities.
- 4. Retail stores.
- 5. All restaurants, bars, gaming facilities and private clubs.
- 6. 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 any political subdivision of the State.
- 7. All patient rooms, waiting rooms and other public areas in health facilities, including, but not limited to hospitals, clinics, pharmacies, physical therapy facilities, doctors' offices and dentists' offices.
- 8. Enclosed shopping malls including indoor flea markets.
- 9. Hotels and motels.
- 10. Lobbies, hallways, and other common areas in multi-unit apartment buildings, condominiums, manufactured home communities, retirement facilities, nursing, homes, and other multiple-unit residential facilities.

11. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
 12. Sports arenas and convention halls, including bowling facilities.
 13. Polling places.
 14. Auction houses.
 15. All fire department facilities
 16. All emergency medical services facilities
 17. Bingo operations
- B. Smoking shall be prohibited in the following outdoor public places within Mason 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 healthcare facilities.
 5. Public parks, including pavilions.
 6. Playgrounds, golf courses, etc.
 7. Fairs and Festivals.
- C. In any dispute arising under this Regulation, the health concerns of the nonsmoker shall be given precedence.
- D. Designated Outdoor Smoking Areas: To ensure the public access into public venues free from tobacco smoke exposure and to prevent tobacco smoke from entering protected areas, outdoor designated smoking areas shall occur at a distance of 20 feet or more outside any entrance, exit, or ventilation units of any buildings or enclosed area where smoking is prohibited. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.

SECTION 1004. REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees. Each employer having an enclosed place of employment located within Mason County shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:
- B. Smoking shall be prohibited in all enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, company vehicles and all other enclosed facilities.
- C. All employers shall supply a written copy of the smoking policy, upon request, to any existing or prospective employee.

SECTION 1005. WHERE SMOKING IS NOT REGULATED

- A. Notwithstanding any other provisions of this Regulation to the contrary, the following areas shall not be subject to the smoking restrictions of this Regulation:
 - Private residences, including individual apartments or housing units which are part of a multi-unit residential housing project or apartment building, except when used as a child care facility, adult care, foster care or other similar social care.
- B. Notwithstanding any other provision of this section, any person who controls any establishment described in this section may declare that entire establishment as a non-smoking facility.

SECTION 1006. POSTING OF SIGNS

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage.
- B. "No Smoking" signs shall be prominently posted in every building or other place where smoking is controlled by this Regulation, by the owner, operator, manager or other person having control of such building or other place.
- C. 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.

- D. 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.

SECTION 1007. PUBLIC EDUCATION

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

SECTION 1008. ENFORCEMENT

- A. Enforcement of this article shall be implemented by the Mason 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 Mason.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Mason County Health Department.
- D. The Mason County Health Department shall, while an establishment is undergoing otherwise mandated inspection or upon an issued complaint, 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.

SECTION 1009. NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any way retaliate against any employee, applicant for employment or member of the public because such person exercises any rights afforded by this Regulation.

SECTION 1010. OTHER APPLICABLE LAWS

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

SECTION 1011. SEVERABILITY

If any portion of this Regulation or the application thereof shall be held invalid, the other provisions of this Regulation shall not be affected, and to this end the provisions of this Regulation are declared to be severable.

SECTION 1012. VIOLATIONS AND PENALTIES**A. Violations:**

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

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

- (a) Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this Clean Air Regulation, or
- (b) Knowingly violate any other provision of this Clean Air Regulation.

(2) Any person who smokes in an area of a premise where smoking is prohibited with knowledge that he or she is in a non-smoking area commits a willful violation of this Clean Air Regulation.

B. Penalties:

The Board of Health may, at its option, seek civil relief and/or file a misdemeanor under WV Code §16-2-15 against any person who willfully violates this Clean Air Regulation.

Enforcement through civil process, includes, but is not limited to a petition for injunctive relief.

Any person, who willfully violates this Clean Air Regulation, may be charged with a misdemeanor under WV 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:

§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.

SECTION 1012. EFFECTIVE DATE

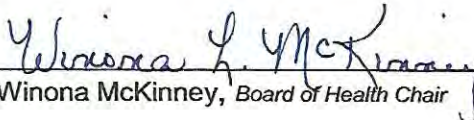
This Regulation, as amended, shall become effective on July 1, 2016.

This Regulation shall supersede previous Mason County Health Department Clean Indoor Air Regulations.

SECTION 1013. REPEAL AND REPLACEMENT OF FORMER REGULATION

This regulation repeals and replaces the Mason County Board of Health Clean Indoor Air Regulation of 2001.


Dr. Curtis B. Pack, DO, Health Officer

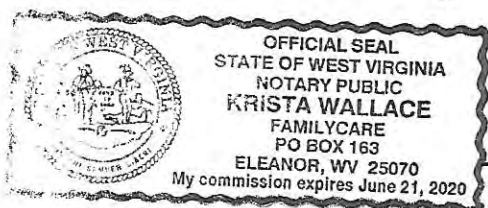

Winona McKinney, Board of Health Chair

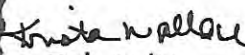
Taken, subscribed and sworn to before me

18th day of May, 2016

Taken, subscribed and sworn to before me this

this 18th day of May, 2016

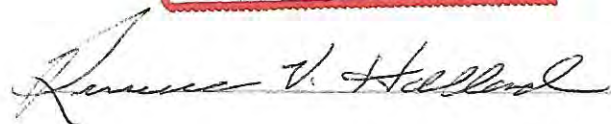



5/18/16

AMENDED: _____

— Notary





FILED: _____

STATE OF WEST VIRGINIA

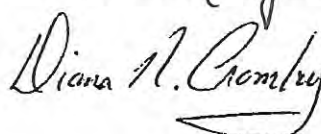
County of Mason, to-wit:

I, DIANA N. CROMLEY, Clerk of the County Commission of said County, do hereby certify that the foregoing writing was this day produced to me in my said office and together with the certificate thereto annexed, was duly admitted to record therein.

Given under my hand this

20th day of May, 2016

2:55 PM



Clerk.

MASON COUNTY CLEAN AIR REGULATION OF 2016

DIANA N. CROMLEY
MASON COUNTY 02:55:28 PM
Instrument No 246515
Date Recorded 05/20/2016
Document Type M/R
Pages Recorded 12
Book-Page 6-495