

MERCER COUNTY CLEAN INDOOR AIR REGULATION

TITLE

This regulation shall be known as the Mercer County Clean Indoor Air Regulation.

FINDINGS and PURPOSE

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

The Environmental Protection Agency (EPA) has classified secondhand smoke as a Group A Carcinogen, known to cause cancer in humans.

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.

Accordingly, the Mercer 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 and the use of electronic smoking devices in enclosed public places except in designated smoking areas, and by regulating smoking and the use of electronic smoking devices in places of employment and (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.

The West Virginia Legislature hereby declares it to be the policy and intent of this state to discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature hereby finds and accepts the medical evidence that smoking tobacco may cause lung cancer, heart disease, emphysema, and other serious health problems while the use of smokeless tobacco may cause gum disease and oral cancer. It is the further intent of the Legislature in banning the use of tobacco products by minors to ease the personal tragedy and eradicate the severe economic loss associated with the use of tobacco and to provide the state with a citizenry free from the use of tobacco.

DEFINITIONS

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

- A. "Attached Bar" means an area of a restaurant.
- B. "Business" means any entity formed for profit-making purposes.
- C. "Employee" means any person employed for direct and indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.

- D. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- E. "Employer" means any entity that employs the paid or volunteer services of one or more persons.
- F. "Enclosed Area" means all space between a floor and ceiling which is enclosed in all sides by solid walls or windows including doors or passage ways. The "enclosed" area extends 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."
- G. "Free Standing Bar" means an establishment which is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. It does not allow for the serving of full course meals. This is a facility that is separated from a non-smoking facility by location in a separate room. It is served by a ventilation system that is separate from the ventilation system that serves smoke-free areas; a "free standing bar" does not include any establishment where smoking is prohibited through a passageway, ventilation system, or any other means and prohibits the entry of persons under the age of eighteen.
- H. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
- I. "Free Standing Video Lottery Room" means a room that is devoted to the placement of Video lottery machines licensed by the WV Gaming Commission. It has solid walls or Windows, enclosed on all sides which is served by a separate ventilation system and Does not allow for the infiltration of second-hand smoke into any non-smoking area. The serving of full meals is prohibited. It shall not serve as a break room for employees.
- J. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
"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.
- K. "Place of Employment" means any enclosed area under the control of a public or private employer whose employees normally frequent during the course of employment. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
- L. "Public Place" means any enclosed areas to which the public is invited or in which the public is permitted. A private residence is not a "public place."
- M. "Restaurant" means any establishment that serves food to the public, guests, patrons and employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
- N. "Retail Store" means any establishment that sells goods for 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.
- O. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and in which the sale of other products is merely incidental. It is a facility that does not possess a food service permit.
- P. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, plant, or other smoking equipment in any manner or in any form. "Smoking" also includes the use of any electronic smoking device 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.

REGULATION OF SMOKING IN ENCLOSED PUBLIC PLACES

- A. Smoking shall be prohibited in all enclosed public places within Mercer County, including but Not limited to the following places:
1. Grocery Stores and Convenience Stores.
 2. Retail Stores
 3. Elevators
 4. Restrooms
 5. All means of public transit, including ticket, boarding and waiting areas.
 6. All waiting areas and lobbies in all business and non-profit entities.
 7. Restaurants
 8. 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 subdivision of the State during such time as a public meeting is in progress.
 9. All patient rooms, waiting rooms, and other public areas in health care facilities, including but not limited to hospitals, clinics, pharmacies, primary care facilities, physical therapy facilities, doctor's offices, dentist's offices, and optometrist's offices.
 10. Enclosed Shopping Malls
 11. Bowling Alleys
 12. Polling Places
 13. Fire Halls
 14. Child Care and Adult Day Care Facilities.
- B. Non-smoking areas shall be designed so that patrons would not be required to pass through smoking areas on a routine basis in order to patronize an establishment or to reach a non-smoking area.
- C. Notwithstanding any other provision of this section, any person who controls any establishment or facility described in this section may declare that entire establishment or facility as non-smoking.
- D. In any dispute arising under this regulation, the concerns of the non-smoker shall be given precedence.

REGULATIONS OF SMOKING IN ENCLOSED PLACE OF EMPLOYMENT

- A. It shall be the responsibility of the employers to provide a smoke-free workplace for all employees.
- B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within Mercer County shall adopt, implement, make known and maintain a written smoking policy that shall contain the following requirements:
Smoking shall be prohibited in all enclosed facilities within a place of employment to the maximum extent possible. 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.

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:
1. Free Standing Bars.
 2. Free Standing Video Lottery Rooms.
 3. Private residences, except when used as a child care or health care facility.
 4. Designated Hotel and Motel rooms rented to guests.
 5. Retail tobacco stores which do not possess a food service permit.

6. Vape Store (means any store utilized primarily for the sale of vaping products and which the sale of other products is merely incidental and does not possess a food service permit).

The age restriction is 18. WV Code 16-9A-2

7. Fraternal Organizations who have IRS status 501c8, 501c10, or 501c19.

- B. Notwithstanding any other provisions of this section, any person who controls any establishment described in this section may declare that establishment as a non-smoking facility.

POSTING OF SIGNS

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signs.
- B. "No Smoking" signs shall be conspicuously posted in every building or other place where smoking is controlled by this regulation, including restrooms and elevators, by the owner, operator, manager or other person having control of such building or other place.
- C. Every establishment where smoking is controlled by this regulation shall have posted at each entrance a conspicuous sign stating that smoking is prohibited.
- D. Facilities that permit smoking must post signs advising patrons of secondhand smoke hazards, and that minors are prohibited.
- E. 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 area.

ENFORCEMENT

- A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this regulation shall be the ultimate responsibility of the Mercer County Health Department.
- B. Any owner, operator, manager, or other person of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.

NON-RETALIATION

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

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.

SEVERABILITY

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

VIOLATIONS AND PENALTIES

- A. Willful violation of the Clean Indoor 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 in an area of a premise where smoking is prohibited with the knowledge that he or she is in a non-smoking area commits a willful violation of this clean indoor air regulation.

B.

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 Indoor Air Regulation, W. Va. 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.

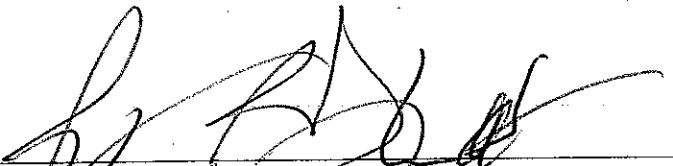
Any person who willfully obstructs any local health officer, public health nurse, sanitarian or any other person charged with the enforcement of any public health law, in the performance of that person's legal duties in enforcing the law, is guilty of a misdemeanor and, upon conviction, shall be punished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

Any person who willfully violates any of the provision 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.

Amended Date: 11/4/15

EFFECTIVE DATE: 11/4/15



Board of Health Chairman