



MONONGALIA COUNTY HEALTH DEPARTMENT  
453 VAN VOORHIS ROAD  
MORGANTOWN, WV 26505-3408

Carve L. Blaney  
MONONGALIA County 10:05:11 AM  
Instrument No 671831  
Date Recorded 01/27/2017  
Document Type CAO  
Page Recorded 6

# Monongalia County Health Department

453 Van Voorhis Road Morgantown, WV 26505-3408

Phone 304-598-5100 Fax 304-598-5199

www.monchd.org

## CLEAN INDOOR AIR REGULATION

Monongalia County Health Department hereby ordains that the Monongalia County Clean Indoor Air Regulation, as adopted January 24, 1992, is amended as:

### TITLE

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

### FINDINGS AND PURPOSE

The United States Surgeon General and other authoritative public health authorities have determined that involuntary inhalation of tobacco smoke is a cause of numerous diseases in healthy non-smokers; is a major contributor to indoor air pollution; places children, unborn children of pregnant women elderly people, and individuals with cardiovascular and/or respiratory disease at special risk; is a trigger for acute episodes of respiratory distress and myocardial infarction; increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers; 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; reduces the life expectancy of persons consistently exposed to secondary smoke and causes substantial losses in productivity through smoking related absences from work and school.

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 electronic cigarettes, 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." Electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. Electronic cigarettes produce an aerosol or 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. 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.

Accordingly, the purposes of this Regulation are:

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

## **DEFINITIONS**

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

“Bar” means an area 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.

“Electronic Smoking Device” means any electronic oral device, such as one composed of one or more of the following: heating element, electronic circuit or similar, 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.

“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.

“Employer” means any entity or person who employs the paid or volunteer services of one or more persons.

“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.

“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 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.

"Private Club" means an entity falling within the definition of Private Club as set forth in West Virginia Code § 60-7-2, for purposes of State Control of Alcoholic Liquors.

"Public Place" means any enclosed 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, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, educational facilities, nursing homes, 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, 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.

"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.

"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 PUBLIC PLACES**

A. Smoking shall be prohibited in all enclosed public places within Monongalia 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. Retail stores and tobacco businesses.
3. All restaurants, private clubs, video lottery parlors and bars.
4. 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.
5. 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.
6. Enclosed shopping malls.

- B. In any dispute arising under this Regulation, health concerns of the Nonsmoker shall be given precedence.

### **REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT**

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 Monongalia 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. 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.

All employers shall supply a written copy of the smoking policy, upon request, to any existing or prospective employee.

### **WHERE SMOKING IS NOT REGULATED**

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, except when used as a child care facility, adult care, foster care or other similar social care.

### **POSTING OF SIGNS**

Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage.

"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.

### **ENFORCEMENT**

A. Although smoking regulations are primarily self-regulating through social pressure, enforcement of this Regulation shall be the responsibility of the Monongalia County Health Department or its designee.

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 way 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 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.

## **VIOLATIONS AND PENALTIES**

### **A. Violations**

Willful violation of this Clean Indoor 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 Indoor Air Regulation, or

(b) Knowingly violate any other provision of this Clean Indoor 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 Indoor 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 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 WV 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, 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.

**EFFECTIVE DATE**

This Regulation, as amended, shall become effective on the first day of the following month after Board of Health adoption and a Notice of Publication Monongalia County, West Virginia.

  
County Health Officer

 chairman  
Chairman, Board of Health

AMENDED: Jan 26, 2017

FILED: January 27, 2017

Adopted	January 24, 1992	Filed: February 10, 1992	Effective: March 24, 1992
Amended	April 23, 1999	Filed: January 27, 2017	Effective February 1, 2017
Amended	January 9, 2012		
Proposed	December 01, 2016		