



Beckley-Raleigh County Health Department  
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## **Clean Indoor Air Regulation**

### **Section 1000. Title**

This article shall be known as the Raleigh County Clean Indoor Air Regulation of 2020

### **Section 1001. 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-smoker; 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-smoker; 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.

Electronic cigarettes, or "e-cigarettes," closely resemble and purposely mimic the act of smoke 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 smoke 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 Beckley-Raleigh County Board of Health finds and declares that the purposes of this ordinance are:

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

**Section 1002. Definitions**

1. “Attached bar” means a bar area of a restaurant. An “attached bar” for the purposes of this ordinance shall not include any area where full meals are served; but may include the service of appetizers and snacks. Although a restaurant may contain a bar, the term “bar” shall not include the restaurant dining area.
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. “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 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.
4. “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.
5. “Employer” means any person, partnership, corporation, including municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
6. “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.
7. “Freestanding bar” means an establishment which is 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, including but not limited to

taverns, nightclubs, cocktail lounges, and cabarets. For the purposes of this regulation, a “freestanding bar” means an establishment whose gross sales of alcoholic beverages are 80% or greater of their total gross sales.

8. “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, 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.
9. “Hotel” means any facility, building or buildings, publicly 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 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.
10. “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, 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. “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 productions and marketing/grocery establishments, retail service establishments, retail stores, theaters, bingo halls, and waiting rooms. A private residence is not a “public place.”
12. “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 if said cocktail lounge or tavern is a “bar” as defined in Sections 1002 (1) and (7).
13. “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.
14. “Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
15. “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.

16. "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.
17. 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.

### **Section 1003. Application of Article to City-Owned [County-Owned] Facilities**

All enclosed facilities including buildings and vehicles owned or leased by the City of Beckley or Raleigh County shall be subject to the provisions of this article.

### **Section 1004. Regulation of Smoking in Public Places**

- A. Smoking shall be prohibited in all enclosed public places within Raleigh County, including, but not limited to, the following places:
  1. Elevators
  2. Restrooms, lobbies, reception areas, hallways and other common-use areas.
  3. Buses, taxicabs and other means of public transit under the authority of Raleigh County, and ticket, boarding, and waiting areas of public transit depots.
  4. Service lines
  5. 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 no limited to, attorneys' offices and other offices, banks, laundromats, hotels and motels.
  7. Restaurants (including outdoor seating areas)
  8. Public areas of aquariums, galleries, libraries and museums.
  9. Any facility which is primarily used for exhibiting any motion pictures, stage, drama, lecture, musical recital or other similar performance.
  10. Sports arenas and convention halls, including bowling facilities.
  11. Every room, chamber, place of meeting or public assembly, including school building under the control of any board, council, commission, committee including joint committees or agencies of Raleigh 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 Raleigh County.
  12. 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 provider.

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. Auctions 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 the entire establishment or facility as a nonsmoking establishment.

### **Section 1005. Regulation of Smoking in Places of Employment**

- A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.
- B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within Raleigh County shall adopt, implement, make known and maintain a written smoking policy which 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 weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

### **Section 1006. Reasonable Distance**

Designated smoking areas shall occur at a reasonable distance of 10 feet or more outside any entrance, exit, or ventilation units of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the areas through entrances, windows, ventilation systems or any other means.

### **Section 1007. Where Smoking is Not Regulated**

- A. Not withstanding any other provision of this article to the contrary, the following areas shall be exempt from Section 1005:
  1. Freestanding bars which meet the requirements of Section 1002 (7) of this article.
  2. Private residents, except when used as a childcare, adult day care or healthcare facility.

3. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
  4. Restaurants, hotel and motel conference or meeting rooms and public and private assembly while these places are being used for private functions.
  5. Outdoor areas of places of employment except those covered in Section 1006 of this article.
  6. Residents, prior to September 4, 2003, of personal care homes, who had smoking privileges under WV 64 CSR 14-8.12.3, as stipulated in Case No. 31120 of the Supreme Court of Appeals of West Virginia, filed December 2, 2003.
  7. Bingo halls who distribute more than one hundred bingo cards or bingo sheets at any bingo occasion as allowed under WV Code Section 47-20-28a, as stipulated in Case No. 31120 of the Supreme Court of Appeals of West Virginia, filed December 2, 2003.
  8. Any fraternal organization who has IRS status 501c8, 501c10, or 501c19.
- B. 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.

#### **Section 1008. Posting of Signs**

- A. 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.
- 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 article by the owner, operator, manager or other person having control of such area.

#### **Section 1009. Enforcement**

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

#### **Section 1010. 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 article.

**Section 1011. Violations and Penalties**

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article 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 article.
- C. Any person who violates any provision of this article shall be guilty of an infraction of Chapter 10 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 other in the enforcement of public health laws; other violation; 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 no 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 issues 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. Public Education**

The Beckley-Raleigh 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 ordinance.

**Section 1013. Other Applicable Laws**

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

**Section 1014. 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.

**Section 1015. Effective Date**

This article shall be effective thirty days from and after the date of its adoption.

Adopted April 27, 2020

Beckley-Raleigh County Board of Health

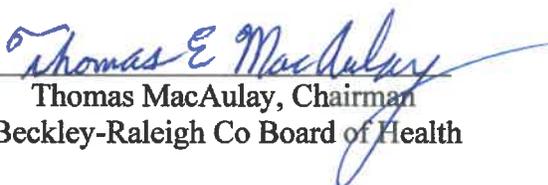
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On April 27, 2020 the Beckley-Raleigh County Board of Health met for a regular business meeting. A motion was made, seconded and approved to amend the Raleigh County Clean Indoor Air Regulation of 2004. This amended regulation will go into effect May 27, 2020.

  
Thomas MacAulay, Chairman  
Beckley-Raleigh Co Board of Health

State of West Virginia  
County of Raleigh

The foregoing instrument was acknowledged before me this 30th April 2020 by Thomas MacAulay, Chairman of the Beckley-Raleigh County Board of Health

  
Notary

