



Tucker County Clean Indoor Air Regulation Tucker County Board of Health

Sec. 1000. Title

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

Sec. 1001. Findings and Purpose

The Tucker County Board of Health does hereby generally accept that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardio vascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function including bronchoconstriction and bronchospasm.

Second hand smoke has been classified as a class A carcinogen. This designation means that second hand smoke is known to cause cancer in humans and that there is no safe level of exposure.

According, the Tucker 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 and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air all have priority over the desire to smoke.

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.

Sec. 1002. Definitions

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

"Bar" means any establishment or part of establishment that is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises.

"Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods and services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

"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.

"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 non-profit entity.

"Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

"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.

"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.

"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, and bars. This shall include all rooms and offices of any agency that receives any monetary support from Tucker County.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, bars, and any other eating establishment which gives or offers the sale of 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.

"Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories in which the sale of other products is merely incidental.

"Service Line" means any indoor line at which (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning or carrying any lighted 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.

"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.

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.

Sec. 1003. Application of Article to County-Owned Facilities

All enclosed facilities including building and vehicles owned by the County of Tucker or any agency that receives any monetary support from Tucker County shall be subject to the provisions of this article.

Sec. 1004. Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed public places within Tucker County, including, but not limited to, the following places:

- Elevators
- Restrooms, lobbies, reception areas, hallways and any other common-use areas.
- Buses, taxicabs, airports and other means of public transit under the authority of Tucker County, and ticket, boarding, and waiting areas of public transit depots.
- Service lines.
- All retail stores.
- All waiting areas and lobbies in all business and nonprofit entities.
- Restaurants, including bars
- Every room, chamber, place of meeting or public assembly, indoor recreational facility, including school buildings under the control of any board, council, commission, committee including joint committees, or any political subdivision of the State during such time as a public meeting is in process.
- All patient rooms, waiting rooms and other public areas in health facilities, including but not limited to hospitals, nursing homes, personal care homes, clinics, pharmacies, physical therapy facilities, doctor's offices and dentist's offices.
- Motel/Hotel/Bed & Breakfast, except that they may designate 25% of their rooms rented to guests as smoking areas.
- Establishments where Bingo is played, except Bingo halls that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-281, in accord with the case, "Foundation For Independent Living, Inc. v. The Cabell-Huntington Board of Health; 214 W.Va. 818, 591 S.E.2d 744, decided December 2, 2003.
- Bowling Alleys
- Private schools
- Polling places
- .Fire halls, except when they are holding private parties.
- Child Care and Adult day care facilities

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.

Sec. 1005. Prohibition of Smoking in Places of Employment

It shall be the responsibility of employers to provide a tobacco smoke-free workplace for all employees.

Within 60 days of the effective date of this article, each employer having an enclosed place of employment located within Tucker County shall adopt, implement, make known and maintain a smoking policy which shall 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.

The smoking policy shall be communicated to all employees within 60 days of its adoption.

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

Sec. 1006. 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 Ten (10) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where smoking is prohibited.

Sec. 1007. Where Smoking 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. Private residences, except when used as a child care or health care facility.
2. Twenty-Five 25% of Designated 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

4. The conference or meeting rooms or public and private assembly rooms of hotels, motels and fraternal organizations while these places are being used for private functions.

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 nonsmoking facility.

Sec. 1008. Posting of Signs

"No Smoking" signs shall be conspicuously posted at the entry way 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.

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.

Sec. 1009. Enforcement

Enforcement of this regulation shall be the ultimate responsibility of the Health Officer of the Tucker County Health Department or his or her lawful designee.

Any owner, operator, proprietor, manager, or other person of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.

Sec. 1010. 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.

Sec. 1011. Violation and Penalties

A. 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 premise 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. The Board of Health may, at its option, seek civil relief and/or file a misdemeanor complaint under WV Code 16-2-15 against any person who willfully violates this clean indoor 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:

“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 provision, 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 the state for violations of provisions of this article”.

C. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Regulation.

D. It shall be unlawful for any person who controls the use of any premises subject to regulation under this Regulation to fail to comply with any of its provisions.

E. Managers, proprietors, or owners charged with implementing such policies shall be immune from complaints resulting from good faith efforts to implement and enforce the above mandated policies.

Sec. 1012. Public Education

The Tucker 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.

Sec. 1013. 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.

Sec. 1014. 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.

Sec. 1015. Effective Date

This Regulation shall be effective on April 1, 2015.

REPEAL AND REPLACEMENT OF FORMER REGULATION

This regulation repeals and replaces the Tucker County Clean Air Regulation adopted in 2002 and effective on March 1st, 2003; this current regulation was amended on December 17th, 2014 and will become effective April 1st, 2015.

This document presented and filed:
03/02/2015 02:48:26 PM



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