A REGULATION ELIMINATNG SMOKING IN WORK PLACES AND PUBLIC PLACES

Section I00. Title

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

Section 101. Authority

Regulation has been adopted in accordance with authority granted by West Virginia State Law, Chapter 16-2-11.

Section 102. Findings And Purpose

The United States Surgeon General and numerous other credible authorities and medical researchers have determined:

A. That involuntary inhalation of secondhand or environmental tobacco smoke can cause or contribute to numerous serious health problems and diseases, including heart disease, cancer, respiratory illness, and acute episodes of decreased respiratory function, including broncho-constriction and broncho–spasm in healthy nonsmokers.

B. That the presence of secondary tobacco smoke is a major contributor to indoor air pollution.

C. That children, elderly people and individuals with cardiovascular and/or respiratory diseases are at increased risk,

D. That the simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate the exposure of nonsmokers; to environmental tobacco smoke. Smoking bans remain the most viable and cost-effective method of protecting patrons. The Environmental Protection Agency (EPA) has classified secondhand smoke as a Group A Carcinogen, known to cause cancer in humans.

E. 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." " 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. E-cigarette use among middle and high school age students increases the risk of nicotine addiction and use of conventional cigarettes.

Accordingly, the Pocahontas County Board of Health finds and declares the purpose of this regulation is to:

A. Protect the health of the public by prohibiting exposure of individuals to a proven harmful environmental toxin, i.e. secondhand smoke, in public place and places of employment.

B. Direct the proprietors of public places of indoor commerce to provide a smoke- free environmental to minimize public exposure to this harmful toxin.

C. Protect the public health and welfare by prohibiting smoking and the use of E-cigarette devices in public places and places of employment.

Section 102. Definitions

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

A. "Business" means any entity formed for profit-making purposes.
B. "Dining Area" means any area containing a counter or table upon which meals are served.
C. "Employee" means any person employed for direct and indirect monetary wages or anything of value, or any person who volunteers for a nonprofit entity.
D. "Employer" means any entity that employs the paid or volunteer services of one or more persons.
E. "Grocery Store" means any supermarket, convenience store, and other retail food production and marketing establishments.
F. 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.
G. "Place of Employment" means any area under the control of a public or private employer whose employees normally frequent during the course of employment t. A private residence is not a "place of employment' 'unless it is used as a childcare or health care facility.
H. "Proprietor" means any owner, operator, manager or other person having control of a public place, including, but not limited to, buildings, businesses, establishments, stores and facilities.
I. "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".
J. "Public Transit" means any means of conveyance or travel available to members of public for a free, including, but not limited to, taxi cabs, buses, limousines and chartered planes .
K. "Restaurant" means any establishment or bar 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.
L. "Retail Store" means any establishment that sells goods or 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.
M. "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 an E-cigarette device which creates a vapor, in any manner or in any form, or the use of any other oral smoking device for the purpose of circumventing the prohibition of smoking in this regulation.

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

N. 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.

Section 104. Application of Regulation to Publicly Owned Facilities

All enclosed facilities including buildings and vehicles owned and occupied by Pocahontas County, or any municipality located in Pocahontas County, shall be subject to the provision of this regulation.

Section 105. Regulation Of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within Pocahontas County, including, but limited to the following places:

1. Grocery stores and Convenience stores.
2. Service lines, restrooms, lobbies, elevators, enclosed stairwells and parking garages, reception areas, hallways and any other common use areas.
3. All means of public transit, including ticket, boarding and waiting areas.
4. All waiting areas and lobbies in all business and non-profit entities.
5. Restaurants.
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 at all times.
7. 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.
8. Bowling alleys.
9. Private schools.
10. Polling places.
11. Fire halls.
12. Childcare and Adult day care facilities.
13. Retail stores.

Section 106. 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.

B. With in 30 days of the effective date of this article, each employer having an enclosed place of employment located within Pocahontas 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 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 (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.

Section 107. Reasonable Distance

To ensure tobacco smoke does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems or by any other means, outdoor designated smoking areas shall be located at a reasonable distance of at least twenty-five (25) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where smoking is prohibited, if such a space is subject to the control of the proprietor, owner, operator or manager for the building or other area where smoking is prohibited .

Section 108. Where Smoking is Not Regulated

Notwithstanding any other provision 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 childcare or health care facility.
2. Outdoor places of employment.
3. No more than twenty-five percent (25) of hotel and motel rooms rented to guests, in all hotel and motel facilities, designated rooms shall be completely enclosed and separately ventilated.
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.
5. Bingo Halls that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47 20-281, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
6. Residents, prior to September 4, 2003, of personal care homes, who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.

Section 109. Posting Of Signs

A. Because rules regulating smoking are primarily &elf-enforcing, their success depends heavily upon adequate signage.
B. " NO SMOKING" or the international "NO SMOKING" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) 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. 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.

D. Every public place where smoking is allowed by this regulation shall have posted at every entrance a conspicuous sign that reads:

HEALTH WARNINGS
"SMOKING IS PERMITTED WITHIN THIS FACILITY. YOU WILL BE EXPOSED TO SECONHAND SMOKE. SUCH EXPOSURE CAN CAUSE OR CONTRIBUTE TO CANCER, HEART DISEASE, RESPIRATORY ILLNESS AND OTHER SERIOUS HEALTH PROBLEMS."

Section 110. Enforcement

A. Although smoking regulations are primarily self-regulating through public pressure, enforcement of this regulation shall be the ultimate responsibility of the Health Officer of the Pocahontas County Health Department or his or her lawful designee.

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

Section 111. 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 exercise any rights afforded by this regulation .

Section 112. 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 113. Severability

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

Section 114. Violations 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 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 or possesses a burning or heated cigarette, cigar or pipe tobacco 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 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 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.

Section 115. Effective Date

This regulation shall be effective July 1, 2007.

Amended Date January 19, 2016

Effective Date April 15, 2016

Sworn to before me April 6, 2016

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JACLYN N. HOLLANDSWORTH
26 LONESOME HOLLOW LANE
MARLINTON, WV 24954
My commission expires February 11, 2020

Melissa L Bennett
POCAHONTAS County 09:22:54 AM
Instrument No 152478
Date Recorded 04/07/2016
Document Type MISC
Pages Recorded 7
Book-Page 7-670

WEST VIRGINIA, CLERK'S OFFICE OF THE COUNTY
COMMISSION OF POCAHONTAS COUNTY

April 7. 2016

this instrument was this day presented to me in my office and thereupon the same together with the certificate of acknowledgement thereunder written, is admitted to record therein.

Teste Melissa L. Bennett Clerk

By: Lisa G Workman. deputy