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JEFFERSON COUNTY HEALTH DEPARTMENT
CLEAN INDOOR AIR REGULATION
ADOPTED JULY 11, 2003
AMENDED MARCH 5, 2004
AMENDED FEBRUARY 14, 2020

PROMULGATED BY:
THE JEFFERSON COUNTY BOARD OF HEALTH

TERRENCE REIDY, MD, MPH, HEALTH OFFICER
JOHN BRESLAND, CHAIRMAN, BOARD OF HEALTH
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PUBLIC SMOKING REGULATION ADOPTED
BY THE JEFFERSON COUNTY BOARD OF HEALTH

THESE REGULATIONS ARE ADOPTED AND PROMULGATED BY THE
JEFFERSON COUNTY BOARD OF HEALTH BY VIRTUE OF THE
AUTHORITY VESTED IN IT BY THE WEST VIRGINIA STATE CODE
CHAPTER 16-2-11

BE IT ORDAINED AND ENACTED AS FOLLOWS:

TITLE

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

FINDINGS AND PURPOSE:

The Board of Health of Jefferson County West Virginia finds that it is in the best interest of the people of Jefferson County to protect non-smokers from involuntary exposure to environmental tobacco smoke in most areas open to the public. There is well-documented and known recognition by the medical community at large, including the Surgeon General of the United States, that the use of tobacco and tobacco products constitutes the greatest "potentially avoidable" health threat

to our citizens. Secondhand tobacco smoke contains over 4,000 chemicals and is a Group A carcinogen having no safe level of exposure. It is responsible for over 30,000 deaths annually and hundreds of thousands of cases of respiratory infections in infants and children.

In addition, 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. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or nonexistent."¹ "E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to smoke emitted by traditional tobacco products. Their use in the workplace 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 significantly increases the risk of nicotine addiction and use of conventional cigarettes."²

The United States Surgeon General and other authoritative public health authorities have determined that clean indoor air regulations prevent disease by contributing to the reduction of the rate of smoking and nicotine addiction among the general population and by discouraging new smokers from becoming addicted to smoking.

Accordingly, the purposes of this regulation are (1) to improve the health and safety of Jefferson County citizens by prohibiting smoking and use of E-cigarettes as described herein and (2) to guarantee that the indoor air environment of non-smokers is as free as possible of chemicals resulting from smoking. It is recognized that the need to breathe smoke-free air is a priority over the individual's need to smoke.

DEFINITIONS

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

- A. "BAR" means an establishment or area which is operated primarily for the serving of alcoholic liquor, beer and/or non-intoxicating beer for consumption by guests on the premises and in which the serving of food is incidental to the consumption of such beverages. For the purposes of this regulation, a bar means an establishment whose gross sales of alcoholic beverages are 80% or greater of their total gross sales.
- B. "BUSINESS" means any entity formed for profit making purposes and includes retail establishments as well as professional corporations and other entities where professional services are delivered.
- C. "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.
- D. "EMPLOYEE" means any person who is employed for direct or indirect wages or profit, or any person who volunteers for a non-profit entity.
- 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 on all sides by solid walls or windows (exclusive of door or passageways) which extend from floor to 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. "GROCERY STORE" means any supermarket, convenience store, or any other retail food production and/or marketing establishment.

- H. "GAMING ESTABLISHMENTS" refers to the Charles Town Races and Slots and other Horse or Dog Racing facilities licensed by the State Racing Commission.
- I. "NON-PROFIT ENTITY" means any entity whose operations are not committed to private financial gain or profit. A public agency is not a "non-profit entity" within the meaning of this section.
- J. "PLACE OF EMPLOYMENT" means any enclosed area under the control of a public or private employer normally frequented by employees during the course of employment. A private residence is not a "place of employment" unless it is used full-time or part-time as a childcare, adult care or health care facility.
- K. "PUBLIC PLACE" means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a "public place" unless it is used full-time or part-time as a child care, adult care, or health care facility.
- L. "RESTAURANT" means any establishment, which is required to hold a valid food service permit issued by the Jefferson County Health Department. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section A above.
- M. "RETAIL STORE" means any establishment that sells goods or services directly to the general public.
- N. "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.
- O. "SMOKING" means inhaling, exhaling, burning, or carrying, any lighted or heated cigar, cigarette, pipe, weed, plant, or any other lighted or heated tobacco or plant product intended for inhalation in any manner or in any form. "Smoking" also includes the use of an e-cigarette or any similar 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.

REGULATION OF SMOKING IN PUBLIC PLACES

- A. IN ANY DISPUTE ARISING UNDER THIS REGULATION, THE HEALTH CONCERNS OF THE NON-SMOKER SHALL BE GIVEN PRECEDENCE.
- B. Smoking shall be prohibited in all enclosed public places within Jefferson County including, but not limited to, the following:
1. All areas of Grocery Stores
 2. Elevators
 3. Restrooms, lobbies, reception areas, hallways, and other common use areas
 4. Retail Stores and all areas within
 5. Restaurants
 6. All areas available to and customarily used by the public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys' offices and other offices, banks, Laundromats, hotels, and motels
 7. All patient rooms, waiting rooms, and other public areas in health care facilities, including but not limited to, hospitals, clinics, and pharmacies
 8. Enclosed shopping malls
 9. Sports arenas and convention halls
 10. Polling places
 11. Bingo and Fire Halls
 12. Bowling Alleys
 13. Child Care Centers

14. 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 agencies of the county or any political subdivision during such time as a public meeting is in progress

15. Buses, taxicabs, all other means of public transit, as well as ticket, boarding, and waiting areas of public transit depots

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. Within 60 days after the effective date of this regulation, each employer having an enclosed area of employment located within Jefferson County, shall adopt, implement, make known, post, and maintain a written policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within the place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallway, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

REASONABLE DISTANCE

Designated smoking areas shall not be authorized within 20 feet of any public entrance or intake to a ventilation system serving a non-smoking facility.

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. Private residences, except when used full-time or part-time as a child care, adult care, or health care facility.

2. Bars (except that smoking shall not be permitted in any area where contamination of exposed food; clean equipment, utensils and linens; unwrapped single-service and single-use articles; or other items needing protection can result as mandated by WV §64CSR17, Food Establishments)
3. Hotel and motel rooms rented to guests which are designated as smoking rooms.
4. Retail tobacco stores.
5. Gaming Establishment, except that it shall have at least ten percent (10%) of the total authorized number of gaming machines being located in a non-smoking area and, in addition, the installation of a ventilation system throughout the premises that ensures a minimum air exchange of 6 times per hour, and a minimum of 12 times per hour in all spaces that serve food.
6. Restaurants, hotel and motel conference and meeting rooms, and public and private assembly rooms while these places are being used for private functions.
7. Charitable Bingo facilities, as defined under WV Code § 47-20-1⁰ et seq., provided the facility has a non-smoking area, as required and defined by statute.
8. Personal Care Homes, existing prior to September 4, 2003, which under 64 WV C.S.R. § 14, may not terminate smoking privileges of Pre-September 4, 2003, residents who smoke, but shall have non-smoking areas and adopt no-smoking policies, subject to said grandfathered provision.

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 non-smoking facility.

POSTING OF SIGNS

A. Rules regulating smoking depend upon self-enforcement in a large measure, to be effective. This requires the maximum use of signage.

- B. "NO SMOKING" signs shall be conspicuously posted in every building or other area where smoking is prohibited 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 public place where smoking is prohibited by this regulation shall have posted at every entrance, a conspicuous sign clearly stating that smoking is prohibited.

ENFORCEMENT

- A. Enforcement of this regulation is primarily deemed to be of self-regulation in nature.
- B. In the final analysis, the owner, manager, operator, or senior supervision on the premises is responsible for the enforcement of this regulation.
- C. Violations may be reported to the Jefferson County Health Department for appropriate action.

NONRETALIATION

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 required by this regulation.

VIOLATIONS AND PENALTIES

- A. It shall be unlawful for any person who owns, manages, or otherwise controls the use of any premises subject to these regulations 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 regulation.
- C. Food service establishments that hold a valid, current food service permit issued by the Jefferson County Health Department and who fail to take

appropriate action to enforce this regulation will be subject to the following sanctions.

FIRST VALIDATED OFFENSE: ORAL WARNING

SECOND VALIDATED OFFENSE: WRITTEN WARNING

THIRD VALIDATED OFFENSE: SUSPENSION OF PERMIT
FOR 1 WEEK

SUBSEQUENT OFFENSES: MORE LENGTHY SUSPENSIONS;
LEGAL ACTION

D. Willful violation of this clean indoor air regulation is an unlawful act. Any person who owns, manages, operates, or otherwise controls the use of a premises 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 on this clean indoor air regulation, or

(2) knowingly violate any other provision of this clean indoor air regulation.

Any person who smokes or possesses a burning cigarette, cigar, pipe tobacco, or E-cigarette 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.

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 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 on this clean indoor air regulation, WV Code 16-2-15 provided as follows:

16-2-15. Obstructing local health officers and others in the 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 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.

E. All reports of violations of this regulation are a matter of public record and confidentiality cannot be guaranteed.

SEVERABILITY

If any portion of this regulation, or the application thereof, shall be held invalid, all other provisions of this regulation are declared to be severable.

EFFECTIVE DATE

The amendments to this regulation shall have an effective compliance date of 03-16-2020.

John S. Bresland
John S. Bresland, Chairman

Feb 14, 2020
DATE

¹Summary 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>

²*Electronic Cigarette Use Among Middle and High School Students*, *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, Vol.62, No. 35, September 6, 2013, Pg. 729

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