

PUBLIC NOTICE

AMENDMENT TO THE MERCER COUNTY CLEAN IN-DOOR AIR REGULATION PROPOSED

The Mercer County Board of Health is considering amendments to the Mercer County Indoor Air Regulation of 2015.

The proposed amendment would prohibit smoking in all enclosed public places within Mercer County and specific outdoor public places.

Written comments on the proposed amendment will be received by the Mercer County Board of Health 30 period beginning on 01/15/20 and ending on 02/13/20.

Written comments should be mailed to the Mercer County Health Department, 978 Blue Prince Road, Bluefield, WV 24701 or emailed to Susan.P.Kadar@wv.gov

A copy of the proposed regulation can be obtained at the Mercer County Health Department Monday through Friday, 8AM - 4Pm

A Copy of the proposal will be posted at the Mercer County Courthouse, Craft Memorial Library and the Princeton Public Library

NOTE: THIS NOTICE IS NOT REQUIRED BY LAW TO BE IN THE FORM OF A LEGAL NOTICE

THE MERCER COUNTY HEALTH DEPARTMENT CLEAN AIR REGULATION

SECTION 1000. TITLE

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

SECTION 1001. FINDINGS AND PURPOSE

The United States Surgeon General and other authoritative public health authorities have determined that involuntary inhalation of tobacco smoke (a) is a cause of numerous diseases in healthy non-smokers; (b) is a major contributor to indoor air pollution; (c) places children, unborn children of pregnant women, elderly people, and individuals with cardiovascular and/or respiratory disease at special risk; (d) is a trigger for acute episodes of respiratory distress and myocardial infarction; (e) increases the lifetime exposure to carcinogenic tobacco smoke of both smokers and non-smokers; (f) burdens the health care system by increasing the number and frequency of required hospital admissions and emergency visits thereby increasing public and private expenditures required for treatment; (g) reduces life expectancy of persons consistently exposed to secondary smoke and (h) causes substantial losses in productivity through smoking related absences from work and school.

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 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 use to manufacture these products are inconsistent or non-existent."

"Summary of results: laboratory analysis of electronic cigarettes conducted by the FDA, July 22, 2009" <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>

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 smoking prohibitions.

Accordingly, the Mercer County Board of Health considers, in regard to this Clean Air Regulation, that traditional tobacco products and electronic cigarettes shall both be defined as a means of introducing unhealthy toxins and chemicals into the air which can be harmful to the user and those who may involuntarily inhale the smoke and/or vapors emitted by these products.

Excerpted from WV Supreme Court Decision #31120, December 02, 2003, ... "we find that...air regulations of local boards of health that place restrictions on smoking in public places (1) are consistent with the findings of the Legislature "smoking may cause lung cancer, heart disease, emphysema and other serious health problems," (2) advance the legislatively prescribed public policy "to provide the state with a citizenry free from the use of tobacco," and (3) fall within the bounds of authority granted by the Legislature to such boards..."

Accordingly, the purposes of the Regulation are: (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) 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; (3) to facilitate smoking cessation by active smokers; and (4) to discourage non-smokers from taking up the habit and thereby developing a nicotine addiction.

SECTION 1002. DEFINITIONS

The following words and phrases, whenever used in this Regulation, 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. A "bar must have 80% (eighty percent) or greater of its total sales, excluding Lottery, in alcoholic beverages.

"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 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 name or descriptor.

"E-cigarette or Vape Store" means any store utilized primarily for the sale of vaping products and which the sale of other products is merely incidental and which does not possess a food service permit.

"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 contains openings of any kind.

“Healthcare Facility” means an office or institution providing care of treatment of disease, whether physical, mental, emotional, or other medical, physiological or psychological conditions including but not limited to, hospitals, rehabilitation hospitals, nursing homes, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialties within these professions. Healthcare facility includes all waiting rooms, hallways, private rooms, semi-private rooms, and any adjacent outdoor property under its control.

“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 purposes of this regulation.

“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 or childcare, 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 WV Code, Section 60-7-2, for purposes of: (1) state control of liquors; (2) or an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, and is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.

“Public Place” means any 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, hotel/motels, restaurants, retail stores, offices, bingo operations, commercial establishments, elevators, indoor

theaters, public transit, libraries, museums, concert halls, public conveyances, bowling alleys, education facilities, 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, public and private educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, attorney and medical provider'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.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other establishment which gives, or offers for sale, food or beverage 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 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.

"Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and in which the sale of other products is merely incidental. It is a facility that does not possess a food service permit.

"Service Line" means any line at which one or more persons are waiting for or receiving service of any kind. Whether or not the service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or any form. Smoking also includes the use of an electronic cigarette 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.

SECTION 1003. REGULATION OF SMOKING IN PUBLIC PLACES

SMOKING SHALL BE PROHIBITED IN ALL ENCLOSED PUBLIC PLACES AND BUSINESSES WITHIN MERCER COUNTY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING PLACES:

All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorney's offices and other offices, banks, laundromats, elevators, waiting rooms, restrooms, hallways, lobbies and any other common-use areas.

All means of public transportation including taxis and buses, and all areas, including ticket, boarding and waiting areas.

Public areas of aquariums, galleries, libraries, museums and community centers.

Childcare and adult day care facilities.

Retail establishments.

Retail tobacco and vape/e-cig stores that have a food service permit and/or deal in other goods or products unrelated to tobacco or vaping agents.

All restaurants (food service establishments).

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.

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 dentist's offices.

Enclosed shopping malls and flea markets.

All hotels/motels, rooming houses and B&B's.

Lobbies, hallways, and other common areas in multi-unit apartment buildings, condominiums, manufactured home communities, retirement facilities, nursing homes and other multiple-unit residential facilities.

Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.

Sports arenas and convention halls, including bowling facilities.

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Polling places.

Auction houses.

All fire department facilities. Exception: vehicle storage areas/bays.

All emergency medical services facilities. Exception: vehicle storage areas/bays.

All facilities associated with religious gatherings.

SMOKING SHALL BE PROHIBITED IN THE FOLLOWING OUTDOOR PUBLIC PLACES WITHIN MERCER COUNTY:

Outdoor services line, ticketing areas, and boarding areas.

Concourse areas of stadiums and outdoor seating of recreational areas.

Outdoor serving areas of restaurants.

All outdoor property of healthcare facilities, including parking lots and sidewalks.

Public parks, including pavilions and youth recreational areas.

Playgrounds.

All fairs and festivals.

(see exceptions section 1005.)

In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

DESIGNATED OUTDOOR SMOKING AREAS

To ensure that public access into public venues is free from tobacco smoke or electronic vapor exposures and to prevent smoke or vapor from entering protected areas, outdoor designated smoking areas shall occur at a distance of 20 feet or more outside any entrance, exit, or ventilation units of any buildings or enclosed area where smoking is prohibited. This shall include fresh air intakes for the heating, ventilation, air-conditioning ("HVAC") system of any building.

SECTION 1004. REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT

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

Each employer having an enclosed place of employment located within Mercer 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, lobbies, employee lounges, stairwells, restrooms, company 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.

SECTION 1005. 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, including individual apartments of housing units which are part of a multi-unit residential housing project or apartment building, except when used as a childcare facility, adult care, foster care or other similar social care.

Bingo halls as set forth by WV State Code.

Private clubs, free standing bars, free standing video lottery.

Retail tobacco stores which do not possess a food service permit.

Vape store (means any store utilized primarily for the sale of vaping products and which the sale of other products is merely incidental and does not possess a food service permit). Age restriction of 18. WV Code 16-9A-2

Fraternal organizations who have IRS status 501c8, 501c10, or 501c19.

Notwithstanding any other provision of this section, any person who controls any establishment describes in this section may declare that entire establishment as a non-smoking facility.

SECTION 1006. 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.

They may use the international "no smoking" symbol. (a pictograph representation of a burning cigarette with red lettering and with a red bar across it)

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.

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.

At public places where smoking is permitted, signage **MUST** be posted at every entrance, conspicuously that reads:

HEALTH WARNING

"Smoking is permitted in this establishment/facility. You will be exposed to second-hand smoke. Such exposure can cause or contribute to cancer, heart disease, respiratory illness, and other serious health issues."

(Lettering shall be **bold**, at least 1 inch in height and ¼ inch in width with the heading at least 2 inches in height and 3/8 inch in width.)

SECTION 1007. ENFORCEMENT

Enforcement of this Regulation shall be implemented by the Mercer County Health Department Health Officer or his or her designee. Enforcement can also be executed by any Law Enforcement Official (state, county, city, or town) and by any Code Enforcement Official (building inspectors, fire inspectors, and code enforcement officers).

Notice of the provisions set forth in this Regulation shall be given to all applicants for a business license in Mercer County.

Any citizen who desires to register a complaint under this section of the Regulation may initiate enforcement with the Mercer County Health Department (MCHD).

The MCHD shall inspect for compliance of this regulation. The Board of Health can, upon request, conduct education and/or consultation with any entity or business for the implementation of this Regulation. Once the entity or business has implemented this Regulation, a request can be made for consultations for compliance without fear of citation. If an inspection is already in progress at an entity, the request is not applicable at that time.

Any owner, manager, operator or employee of any establishment regulated by this Regulation shall inform persons in violation of the Regulation of the appropriate provisions thereof.

SECTION 1008. NON-RETALIATION

No person or employer shall discharge, refuse to hire or in any way retaliate against any employee, applicant for employee or member of the public because such person exercises any rights afforded by this Regulation.

SECTION 1009. OTHER APPLICABLE LAWS

This Regulation shall not be interpreted or construed to permit smoking where is is otherwise restricted by other applicable laws, ordinances or regulations.

SECTION 1010. 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 the Regulation are declared to be severable.

SECTION 1011. VIOLATIONS AND PENALTIES

Violations:

Willful violation of this Clean Air Regulation is an unlawful act.

Any person who owns, manages, operates or otherwise controls the use of a premise shall commit a willful violation if they:

Knowingly permit smoking on a premises subject to their control in an area where smoking is prohibited by the provisions of this Regulation, or

Knowingly violate any other provision of this Regulation.

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 Regulation.

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 Regulation.

Enforcement through civil processes, includes, but is not limited to, a petition for injunctive relief.

Any person who willfully violate this 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 Regulation, WV Code {16-2-15 provided as follows:

{16-2-15. Obstructing local health officers and others 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 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 or 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 1012. EFFECTIVE DATE

This regulation, as amended, shall become effective on _____.

This Regulation shall supersede previous Mercer Board of Health Clean Air Regulations.

SECTION 1013. REPEAL AND REPLACEMENT OF FORMER REGULATION

This Regulation repeals and replaces the Mercer County Board of Health Clean Air Regulation of 2015.

Signed: _____
Mercer County Board of Health Chairman

Adopted: _____