

Draft for January 12, 2015 BOH Meeting
Preston County Regulation Eliminating Smoking in Workplaces
and Enclosed Public Places (100% Smoke-Free)

Public smoking regulations adopted by Preston County Board of Health in accordance with authority granted by West Virginia State Law, Chapter 16-2-11.

Section 1000. Title

This **article regulation** shall be known as the Preston County Smoke-free **Clean** Indoor Air **Regulation** Act of 2004 **2016**.

Section 1001. Findings and Purpose

The Preston County Board of Health does hereby find 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 cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

Health hazards induced by breathing second-hand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including broncho-constriction and broncho-spasm.

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 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 the public and private expenditures required for the treatment; (g) reduces the 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 (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."¹ "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

¹ 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.)

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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

As stated in a December 2, 2003 WV Supreme Court Case #31120.... "In attempting to minimize the effects of tobacco smoke on the general public in public places, the regulations of [boards of health] address a serious health issue which the Legislature has recognized. Based upon the foregoing observations, we find that clean indoor regulations of local boards of health that place restrictions on smoking in enclosed public places (1) are consistent with the findings of the Legislature "that 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 Preston County Board of Health finds and declares that the purposes of this ordinance regulation are (1) to protect the public health and welfare by prohibiting smoking and the use of electronic smoking devices and hookahs 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 shall have priority over the desire to smoke (3) to facilitate smoking cessation by active smokers, and (4) to discourage youth from taking up the habit and thereby developing a nicotine addiction.

Section 1002. Definitions

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

1. "Bar" means an area 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. A "bar" for the purpose of this definition has fifty percent (50%) or greater of total sales in alcoholic beverages. A "bar" for the purpose of this definition does not include any establishment where tobacco smoke can filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means.
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. "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.
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.

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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5. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which 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.~~ 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 containing openings of any kind.
7. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities and any outdoor adjacent property under their control including parking lots.
8. "Hotel" means any facility, building or buildings, publically 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 be limited to boarding houses, hotels, motels, inns, courts,
9. "Place of employment" means any enclosed 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 class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
10. "Public places" 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, bars, retail food production and marketing establishments, retail service establishments, retail stores, bingo operations, gaming establishment, private clubs, theaters, and waiting rooms. A private residence is not a "public place."
11. "Restaurants" 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 is a "bar" as defined in Section 1002 (1).~~
12. "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.

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13. "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 service involves the exchange of money.
14. "Smoking" means any inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form. Smoking also includes the use of a hookah or 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.
15. "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 to engage in physical exercise, participate in athletic competition, or witness sports events.
16. "Private Club" means an entity falling within the definition of Private Club as set forth in Section 60-7-2 of the West Virginia Code, for purposes of State Control of Alcoholic Liquors. Private Club also means 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, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain."

Section 1003. Application of Article to County-Owned Facilities

All enclosed facilities owned by the County of Preston shall be subject to the provisions of this article **regulation**.

Section 1004. Prohibition of Smoking in Public Places

- A. Smoking shall be prohibited in all enclosed public places within the County of Preston, including, but not limited to, the following places:
 1. Elevators.
 2. Restrooms, lobbies, reception areas, hallways, and any other common-use areas.
 3. Buses, taxicabs, and other means of public transit under the County of Preston, 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 not limited to, attorneys' offices and other offices, banks, laundromats, hotels, and motels.
 7. Restaurants, bars, gaming establishments and private clubs.

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8. Public areas of aquariums, galleries, libraries, and museums.
 9. Any facility which is primarily used for exhibiting any motion picture, 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 buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the 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 the County.
 12. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
 13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks **manufactured home parks**, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 14. Polling places.
 15. Bingo games.
 16. Enclosed shopping malls.
 17. Fire departments, rescue squads or other community buildings.
 18. Child care and adult day care facilities.
 - 19. Hotel and Motels.**
- B. 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.
- C. In any dispute arising under this regulation, the health concerns of the nonsmoker shall be given precedence.

Section 1005. Prohibition 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 ninety (90) days of the effective date of this article, e~~ Each employer having an enclosed place of employment located within the County of Preston shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

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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.
- E. In any dispute arising under the smoking policy, the health concerns of the nonsmoker shall be given precedence.

Section 1006. Reasonable Distance

Smoking shall occur at a reasonable distance of twenty (20) feet or more ~~within a designated area~~ outside any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or any other means. Additionally, no one shall be required to pass through an outside smoking area to reach an enclosed area for any reason.

Section 1007. Where Smoking Not Regulated

- A. Notwithstanding any other provision of this article ~~regulation~~ to the contrary, the following areas shall not be subject to the smoking restrictions of this article ~~regulation~~:
 - 1. ~~Bars which meet the requirements of Section 1002 (1) of this article.~~
 - 2. 1. Private residences, including individual apartments, or housing unit, except when used as a licensed child care, adult day care or health care facility.
 - 3. ~~Twenty five percent (25%) of hotel and motel rooms rented to guests.~~
 - 4. ~~Retail tobacco stores.~~
 - 5. ~~Restaurants, hotel, and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.~~
- 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" or "smoke free" signs 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) shall be clearly, sufficiently and conspicuously posted in every ~~entrance~~, building or other

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area where smoking is prohibited by this article **regulation** by the owner, operator, manager or other person having control of such building or other area.

- B. Every public place where smoking is prohibited by this article **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 **regulation** by the owner, operator, manager, or other person having control of such area.

Section 1009. Enforcement

- A. Enforcement of this article **regulation** shall be implemented by the Preston County Health Department, or designee.

B. The Health Department shall inspect for compliance of this regulation.

- C. Notice of the provisions set forth in this article **regulation** shall be given to all applicants for a business license in the County of Preston.
- D. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Preston County Health Department.
- E. The Preston County Health Department ~~or the Fire Department~~ shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this article **regulation** have been complied with.
- F. Any owner, manager, operator or employee of any establishment regulated by this article may **shall** inform persons violating this article **regulation** of the appropriate provisions thereof.
- G. Notwithstanding any other provision of this article **regulation**, a private citizen may bring legal action to enforce this article **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 **regulation**.

Section 1011. Violations and Penalties

- A. 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:

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- 1) 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
- 2) knowingly violate any other provision of this clean ~~indoor~~ air regulation.

Any person who smokes or ~~possesses a burning or cigarette, cigar or pipe tobacco~~ in an area of a premises 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 complaint under W. Va. 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 W. Va. 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 provisions of this ~~article~~ **regulation**, 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~~ regulation.

Section 1012. Public Education

The Preston County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this ~~ordinance~~ **regulation** to citizens affected by it, and to guide owner, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses, **educational site visits** and individuals explaining the provisions of this ~~ordinance~~ **regulation**.

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Section 1013. Other Applicable Laws

This article **regulation** 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 **regulation** or the application thereof to any person or circumstances shall be held invalid in court, then that ruling **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 **regulation** are declared to be severable.

Section 1015. Effective Date

This Regulation shall supersede previous Preston County Board of Health Clean Indoor Regulations and become effective: _____.

This article shall be effective thirty (30) days from and after the date of its adoption.

May 8, 2001 Original Adoption Date

Original Effective August 8, 2001

April 9, 2002 Revisions

AMENDED DATE:

Frederick A. Conley, MD, *Health Officer* , *Board of Health Chair*

Taken, subscribed and sworn to before
me this _day of _____, 201_

Taken, subscribed and sworn to before
me this _____day of _____, 201_