

# GRANT COUNTY

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## CLEAN AIR REGULATION OF 2009

*Effective September 1, 2009*

*Revised: October 2014*



*By*

**GRANT COUNTY BOARD OF HEALTH**

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## The Grant County Clean Air Regulation is a Regulation Eliminating Smoking in Public Places and Places of Employment.

### Section 1000: Title

This regulation shall be known as the Grant County Clean Air Regulation of 2009.

### Section 1001: Findings and Purpose

The United States Surgeon General has determined that involuntary inhalation of tobacco smoke is (a) a cause of numerous diseases in otherwise healthy nonsmokers' and (b) a major contributor to indoor air pollution; and (c) that children, elderly people, hospitality workers and individuals with cardiovascular and/or respiratory diseases are at special risk.

The Environmental Protection Agency (EPA) has classified secondhand smoke as a Group A Carcinogen, known to cause cancer in humans.

- Tobacco smoke contains at least 172 toxic substances: 3 regulated outdoor air pollutants, 33 Hazardous Air Pollutants, 47 Chemicals restricted as Hazardous Waste, 67 Known Human or Animal Carcinogens (inhaled by nonsmokers whether indoors or outdoors).
- There is no safe level of exposure.
- Individual cigarettes are point sources of air pollution; smoking in groups becomes an area source.
- Tobacco smoke pollution outdoors is determined by the density of smokers, the wind velocity (direction and speed), and the stability of the atmosphere.
- Tobacco smoke concentrations dissipate rapidly after smoking stops outdoors. During smoking, tobacco smoke levels outdoors may be as high as secondhand smoke indoors.
- Exposure to secondhand smoke has immediate health consequences such as asthma attacks and other respiratory diseases.

Accordingly, the Grant County Board of Health finds and declares that the purpose of this Regulation is to:

1. Protect the public health and welfare by prohibiting smoking in public places and by regulating smoking in places of employment and
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 and

3. Prohibit the use of electronic smoking devices in enclosed places of employment and public places

Excerpted from the December 2, 2003 WV Supreme Court Decision #31120.... "In attempting to minimize the effects of tobacco smoke on the general public in enclosed 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 air 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...."

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.

### **Section 1002: Definitions**

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

- A. "**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.
- B. "**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 other descriptor.

- C. "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.
- D. "Employer" means any person, partnership, corporation, *including any government corporation or entity*, or non-profit entity, which employs the services of one or more individual persons *or utilizes the services of volunteers to perform services*.
- E. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows including any door or passage ways, whether open or closed, 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.
- F. "Healthcare Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, or other medical, physiological, or psychological conditions including but not limited to, hospitals, rehabilitations hospitals, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialist within these professions. Healthcare facility includes all waiting rooms, hallways, private rooms, semiprivate rooms, and any adjacent outdoor property under its control.
- G. "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 be limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins and tourist homes. The term "hotel" shall include state, county and city parks offering accommodations. The term "hotel" shall not be construed to mean any hospital, sanitarium, extended care facility, nursing home or university or college housing unit, nor any tent, trailer or camper campsites: Provided, That where a university or college housing unit provides sleeping accommodations for the general non-student public for a consideration, the term "hotel" shall, if otherwise applicable apply to such accommodations for the purposes of this regulation.
- H. "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, private offices, 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.
- I. "Public Place" means any 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, bars, gaming facilities, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, and waiting rooms and outdoor service lines and public parks.

- J. "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.
- K. "Service Line" means any 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.
- L. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible tobacco substance 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.
- M. "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: Application of Regulation to all Governmental Facilities.**

All facilities including buildings, shops and vehicles owned or operated by any governmental unit whether federal, state, municipal or county or any agency thereof shall be subject to the provisions of this Regulation.

**Section 1004: Prohibition of Smoking in Public Places**

- A. Smoking shall be prohibited in all enclosed public places within Grant County, including, but not limited to, the following places:
  - 1. Aquariums, galleries, libraries and museums.
  - 2. Child care and adult day care facilities.
  - 3. Buses, taxicabs, airports and other means of public transit, and ticket, boarding, and waiting areas of public transit depots.
  - 4. Service lines.
  - 5. All areas of enclosed public places available to and customarily used by the public in all businesses and non-profit entities patronized by the public,

including but not limited to, banks, laundromats, professional offices, and retail service establishments.

6. Restaurants, bars, free standing bars, and other eating establishments.
  7. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.
  8. Sports arenas and convention halls, including bowling facilities.
  9. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any agency, board, council, commission, committee, including joint committees, of any governmental agency, whether federal, state, county or municipality or any political subdivisions thereof.
  10. Waiting rooms, hallways, wards, private and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, dentists' offices, nursing homes, and any other health care providers.
  11. Lobbies, hallways, and other common areas in apartment buildings, hotels, motels, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities.
  12. Polling places.
  13. Auction houses.
  14. Enclosed shopping malls including indoor flea markets.
  15. All fire department facilities.
  16. All emergency medical services facilities.
  17. All hotels and motels.
- B. Smoking shall be prohibited in the following outdoor public places within Grant County:
1. Outdoor service lines, ticketing areas and boarding areas.
  2. Concourse areas of stadiums and outdoor seating of recreational venues.
  3. Outdoor serving areas of restaurants.
  4. All outdoor property, including parking lots and sidewalks of healthcare facilities.

5. Public parks, including pavilions.

6. Playgrounds.

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- C. Designated Outdoor Smoking Areas: To ensure the public access into enclosed public places, such as described in Subparagraph A above free from tobacco smoke exposure and to prevent tobacco smoke from entering said protected areas, the owner, operator, employer at any such facility may designate an outdoor smoking area which shall be at a distance of at least 20 feet away from any entrance or exit to and from any buildings or enclosed areas where smoking is prohibited. Further said designated smoking area shall not be within twenty (20) feet of any fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building or enclosed area.
- D. Notwithstanding any other provision of this section, any owner, operator, employer, manager or other person who controls any establishment or facility may declare that entire establishment, facility or property as a nonsmoking establishment.
- E. 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.
- B. Each employer having an enclosed place of employment located within Grant 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, and all other enclosed facilities. Additionally, smoking shall be prohibited in vehicles registered to or leased by the business, used by and accessed by employees or others in the course of that business.
- C. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

#### **Section 1006: Where Smoking Not Regulated**

- A. Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from Section 1005:

1. Private residences, including individual apartments or housing units which are part of a multi-unit residential housing project or apartment building, except when used as a childcare, adult daycare, health care facility, or residences that are registered with West Virginia Department of Health as personal or residential board facility.
2. Bingo operations that distribute more than one hundred bingo cards or bingo sheets as allowed under WV Code Section 47-20-28A, as stipulated by the WV State Supreme Court of Appeals, December 2, 2003

#### **Section 1007: Posting of Signs**

- A. "No Smoking" 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 and conspicuously posted in every building or other area where smoking is prohibited by this article, 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 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 by the owner, operator, manager or other person having control of such area.

#### **Section 1008: Enforcement**

- A. Enforcement of this article shall be implemented by the Grant County Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this article shall be given to all applicants for a business license in the County of Grant.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Grant County Health Department.
- D. The Health Department shall inspect for compliance of this regulation.
- E. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

#### **Section 1009: Non-retaliation**

- A. 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.

**Section 1010: 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 in an area of a premise where smoking is prohibited with knowledge that he or she is in a nonsmoking area commits a willful violation of this clean indoor air regulation.

Penalties:

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

Any person who willfully violates this clean 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 Air Regulation, West Virginia Code 16-2-15 provided as follows:

**WEST VIRGINIA CODE**

**§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, 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 1011: Public Education**

The Grant 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 regulation.

**Section 1012: Other Applicable Laws**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Section 1013: Liberal Construction**

This regulation shall be liberally construed so as to further its purposes.

**Section 1014: Severability**


If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, 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 are declared to be severable.

**Section 1015: Effective Date**

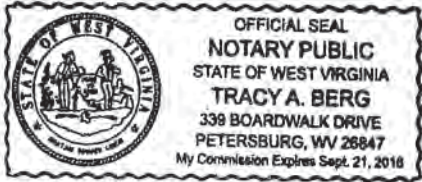
This article effective September 1, 2009 was revised for clarification March, 2010 and approved by the Grant County Board of Health March 22, 2010. This article was revised again in October 2014 and approved by the Grant County Board of Health on 17 November 2014.

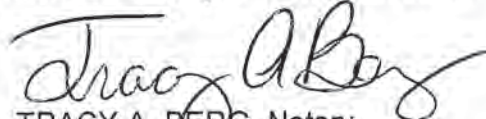
This Regulation shall supersede previous Grant County Health Department Clean Indoor Air Regulations.

  
JOHN L. HAHN, MD  
Health Officer

  
JOHN E. GLOVER, DDS, Chairman  
Grant County Board of Health

Taken, subscribed and sworn to before me this 17<sup>th</sup> day of November 2014



  
TRACY A. BERG, Notary  
My Commission Expires: 21 September 2016

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Sean H. Bennett, Local Health Administrator