

Putnam County Board of Health

2007 Clean Air Regulation (as Amended 11-27-07)

TITLE:

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

AUTHORITY:

This Clean Indoor Air Regulation is adopted by the Putnam County Board of Health in accordance with the authority contained in West Virginia Code, Chapter 16-2-11.

FINDINGS AND PURPOSE:

The United States Surgeon General and numerous other credible public health authorities and medical researchers 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 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. (I) 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 potential new smokers from becoming addicted to smoking.

According to the Surgeon General of the United States, E-cigarettes are a rapidly emerging and diversified product class, these devices typically deliver flavorings, and other additives to users via an inhaled aerosol.

Electronic smoking devices (ESD), commonly referred to as electronic cigarettes, or “e-cigs”, “e-hookahs,” “mods,” “vape pens,” “vapes,” and “tank systems.”, closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid that typically contains nicotine, heated through an electronic ignition system. ESD emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. The January 2018 National Academies of Sciences, Engineering, and Medicine publication states that there is conclusive evidence that in addition to nicotine, most ESDs contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine in indoor environments. Studies show that people exposed to ESD aerosol absorb nicotine (measured as cotinine) at levels comparable to passive smokers. Many of the elements identified in the aerosol are known to cause respiratory distress and disease. ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings — especially cinnamon — show increased oxidative stress and inflammatory responses. 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. The World Health Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA) recommend that ESDs not be used in smoke free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke free laws

As stated in the December 2, 2003 WV Supreme Court Case #31120 (Foundation for Independent Living, Inc., a West Virginia non-profit organization; Philip Dingess and Wanda Dingess, DBA Adam’s Avenue Floral; Blevin’s entertainment, Inc., DBA Blevin’s Roofing Company, and other similarly situated individuals and business, Plaintiffs Below, Appellees v. The Cabell-Huntington Board of Health, Defendant Below, Appellant):

“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 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....."

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

- (A) Protect the health of the public by limiting to the extent possible, exposure of individuals to a proven harmful environmental toxin, i.e. secondhand smoke, in public places and places of employment.
- (B) Direct the proprietors of public places of indoor commerce to provide a smoke-free environment to minimize public exposure to this harmful toxin.

DEFINITIONS:

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

- A. **"BAR"** means an area which is primarily devoted to the serving of beverages for consumption by guests on the premises and which the serving of food is only incidental to the consumption of such beverages.
- B. **"BUSINESS"** means any sole proprietorship, partnership, joint venture, corporation or other business entity of any kind or character, including but not limited to trade or professional services.
- C. **"ELECTRONIC SMOKING DEVICES"** means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

- D. **“EMPLOYEE”** means any person employed for direct or indirect monetary wages or anything of value, or any person who volunteers for a non-profit entity.
- E. **“EMPLOYER”** means any entity which employs the paid or volunteer services of one or more persons.
- F. **“ENCLOSED AREA”** means all space between a floor and ceiling 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.
- G. **“GROCERY STORE”** means any supermarket, convenience store, or other retail food production and marketing establishment.
- H. **“HEALTH CARE 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, rehabilitation hospitals, nursing homes, weight control clinics, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. Healthcare facility includes all waiting rooms, hallways, private rooms, semiprivate rooms, and any adjacent outdoor property, including parking lots and sidewalks under its control.
- I. **“HOOKAH”** also known as a waterpipe, narghile, arghila, qalyān, or shisha, means a single or multi-stemmed instrument for vaporizing and smoking flavored tobacco called shisha in which the vapor or smoke is passed through a water basin often glass-based before inhalation
- J. **“HOTEL AND MOTEL”** 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 consideration, obtain sleeping accommodations. The term shall include but not be limited to boarding houses, hotel, motels, and inns.
- L. **“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.
- M. **"PLACE OF EMPLOYMENT"** means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias,

hallways, construction sites, temporary offices, and company owned or leased vehicles. A private residence is not a "place of employment" unless it is used as a childcare or health care facility.

- N. "PUBLIC PLACE"** means any enclosed area to which the public is invited or which the public is permitted, regardless of whether the building is owned in whole or in part by private person or governmental entities. A public place" includes, but is not limited to hospitals, hotel and motels ,restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, public transit, libraries, museums, concert halls, public conveyances, service lines, bowling alleys, educational facilities, auditoriums, meeting rooms, schools, exhibition halls, convention facilities, polling places, bars, private clubs, gambling 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, offices and warehouses.. A private residence is not a "public place, unless it is used as a child care, adult day care, or health care facility.
- O. "RESTAURANT"** means any establishment, which is primarily devoted to the serving of food including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, patrons and employees, as well as the kitchens and catering facilities in which food is prepared on the premises or serving elsewhere..
- P. "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, grocery stores, automobile dealerships, showrooms, professional offices, service stations, repair or maintenance stores, barber or beauty shops, cleaners and laundromats.
- Q. "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.
- R. "SERVICE LINE"** whether enclosed or not, 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.
- S. "SMOKING"** means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, hookah, weed, plant or other smoking equipment in any

manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or 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.

- T. **"SPORTS ARENA"** whether enclosed or not, 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 to witness sports events.

REGULATION OF SMOKING-IN ENCLOSED PUBLIC PLACES

Unless otherwise stipulated all private businesses licensed to operate in Putnam County, WV may choose to allow smoking. However, for those businesses who choose to allow smoking, minors (those persons 20 years of age or younger) are prohibited from entering the premises of businesses who choose to allow smoking for any reason whatsoever. In addition, smoking is prohibited as follows

- A. Smoking shall be prohibited in all enclosed public places within Putnam County, including but not limited to, the following places:
1. Aquariums, galleries, libraries, and museums
 2. Auction Houses
 3. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
 4. Convention facilities
 6. Elevators
 7. Educational facilities, both public and private.
 10. Hotels and motels
 11. Polling places.
 12. Retail stores

13. Restaurants
 14. Restrooms
 15. Shopping malls including indoor flea markets.
 16. All means of public transit, including buses, taxicabs, bus, train, and airport facilities, including ticket, boarding, transport and waiting areas.
 17. All licensed childcare and health care facilities.
 18. 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.
 19. 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 dentists' offices.
 20. All fire, police or jail facilities.
 21. All emergency medical services facilities operations.
 22. Manufacturing facilities, plants and warehouses.
 23. Office buildings.
 24. Barbershops and beauty parlors.
- B. Smoking shall be prohibited in the following outdoor public places within Putnam County:
1. Outdoor service lines, ticketing areas and boarding areas, whether enclosed or not.
 2. Concourse and outdoor seating areas of sports stadiums, ball fields, concert venues, theaters, other recreational venues, fairs, festivals, carnivals, outdoor flea markets.
 3. Outdoor serving areas of restaurants.
- C. Designated Outdoor Smoking Areas: In locations where outdoor smoking is not otherwise prohibited, to ensure the public access into public venues and places of employment free from tobacco smoke exposure and to prevent tobacco smoke 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 intake area for the heating, ventilation, air conditioning (HVAC) system of any building.

REGULATION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT

- A. It shall be the responsibility of employers to provide smoke-free areas for non-smoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas. Smoking shall be prohibited in all workspaces designated as non-smoking.
- B. Each employer having an enclosed place of employment located within Putnam County shall adopt, implement, make known and maintain a smoking policy.
 - 1. The smoking policy shall be shared with any existing or prospective employee who requests it.
 - 2. Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a non-smoking area.

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, 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 facility, adult care, foster care or other similar social care.
 - 2. 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.

3. Residents, prior to September 4, 2003, of personal care homes, assisted living facilities or residential board facilities, who had smoking privileges under WV 64CSR 14-8.12.3 as stipulated by the WV State Supreme Court of Appeals, December 2, 2003.
- 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 nonsmoking facility.

POSTING OF SIGNS AND REMOVAL OF ASH TRAYS

- A. Because rules regulating smoking are primarily self-enforcing, their success depends heavily upon adequate signage in a visible location. Failure to post signage as directed shall be deemed a violation of this regulation.
- B. "Smoking" or "No Smoking" signs, whichever are appropriate, shall be conspicuously posted by the owner, operator, manager or other person having control of such building or other place where smoking is controlled by this regulation, including restrooms and elevators.
- C. Every public place where smoking is allowed by this regulation shall have posted at every entrance a conspicuous sign that reads:

"HEALTH WARNING"

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

**"SINCE THIS BUSINESS HAS CHOSEN TO ALLOW SMOKING, PERSONS 20 YEARS
OF AGE OR YOUNGER ARE NOT PERMITTED HEREIN"**

- D. All ashtrays 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.

ENFORCEMENT

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

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 exercises rights afforded by this Regulation.

OTHER APPLICABLE LAWS

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

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 this Regulation are declared to be severable.

VIOLATIONS AND PENALTIES

A. Violation(s):

Willful violation of this Clean 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 Air Regulation, or b. Knowingly violate any other provision of this Clean 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 non-smoking area commits a willful violation of this Clean Air Regulation.

B. Penalties: §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.

PUBLIC EDUCATION

The Putnam County Health Department shall engage in a continuing educational program, including social media, to create awareness and promote the purposes and requirements of this Regulation to the community, and to guide and assist owners, operators, and managers in their compliance with it. The program may include publication of a fact sheets and for affected businesses and individuals explaining the provisions of this Regulation.

EFFECTIVE DATE

This Regulation shall be effective on (to be determined).

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