

NICHOLAS COUNTY SMOKE FREE WORKPLACE REGULATION OF 2014

Sec. 1000. Title

This article shall be known as the Nicholas County Clean Indoor Air Regulation of 2014.

Sec. 1001. Findings and Purpose

The Nicholas County Board of Health does hereby generally accept 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; and

Health hazards induced by breathing secondhand 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

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.)

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 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.

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 Nicholas County Board of Health finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking 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.

Sec. 1002. Definitions

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

- (1) "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.
- (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

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

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.
- (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, 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) “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, 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.
- (8) “Public Place” 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, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, bingo halls gaming establishments, private clubs and waiting rooms. This shall include all rooms and offices of any agency that receives monetary support from Nicholas County.
- (9) “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, bars, 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 premise for serving elsewhere, including catering facilities.
- (10) “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.
- (11) “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.

- (12) “Smoking” means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, weed, plant, or any other lighted or heated substance intended for inhalation, 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.
- (13) “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.
- (14) A “private function” shall be defined as a function in which no fee is charged and no tickets are sold, and no public announcements are made to the event and/or function.

Sec. 1003. Application of Article to County-Owned Facilities

All enclosed facilities including buildings and vehicles owned by the Nicholas County or any agency that receives any monetary support from Nicholas County shall be subject to the provisions of this article.

Sec. 1004. Prohibition of Smoking in Public Places

- A. Smoking shall be prohibited in all enclosed public places within the Nicholas County, 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, airports and other means of public transit under the authority of Nicholas County, and ticket, boarding, and waiting areas of public transit depots.
 - (4) Service lines.
 - (5) All 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, and private clubs.

- (7) Restaurants.
 - (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 board, council, commission, committee, including joint committees, or agencies of Nicholas 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. This shall include any agency that receives any monetary support from Nicholas County.
 - (10) Waiting rooms, hallways, wards, private and semi-private 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 any of the following: apartment buildings, manufactured homes communities, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - (12) Polling places.
 - (13) Bingo games/halls.
 - (14) Auction houses.
 - (15) Enclosed shopping malls including indoor flea markets.
 - (16) All fire department facilities.
 - (17) All emergency medical services facilities.
 - (18) Bars.
 - (19) Video lottery establishments.
 - (20) Hotels, motels, inns, rental cabins, and bed and breakfast inns.
- 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.

Sec. 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 Nicholas 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, vehicles, and all other enclosed facilities.

- C. The smoking policy shall be communicated to all employees.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 1006. Reasonable Distance

Designated smoking areas shall occur at a reasonable distance of 10 feet or more outside any entrance, exit, or ventilation units of any buildings or 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. This shall include fresh air intake area for the heating, ventilation, air-conditioning (HVAC) system of any building.

Sec. 1007. 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, except when used as a childcare, adult daycare, health care facility, or homes that are registered with West Virginia Department of Health as personal or residential board facility.
- 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.

Sec. 1008. 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 this regulation prohibits smoking 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.

Sec. 1009. Enforcement

- A. Enforcement of this regulation shall be implemented by the Nicholas County Health Officer, or his or her designee.
- B. Notice of the provisions set forth in this article shall be given to all applications for a business license in the County of Nicholas.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Nicholas County Health Department.
- D. The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.
- 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.

Sec. 1010. 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 afforded by this article.

Section 1011. Violation 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 premise 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 of this clean indoor air regulation, or
- (2) Knowingly violate any other provision of this clean indoor air regulation.

Any person who smokes in an area of 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.

- 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 adoption of this clean indoor air regulation, West Virginia 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, 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.

Sec. 1012. Public Education

The Nicholas 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 programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this regulation.

Sec. 1013. Other Applicable Laws

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

Sec. 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.

Sec. 1015. Effective Date

This article shall become effective January 1, 2004.

This ordinance was approved by the Nicholas County Board of Health May 28, 2003, to become effective January 1, 2004.

AMENDED DATE:

This Regulation shall supersede previous Nicholas County Board of Health Clean Indoor Regulations and become effective: August 15, 2014.

Joseph Hoffman, Chairman
Nicholas County Board of Health