

Pendleton County Clean Indoor Air Regulation

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Amended: August 12, 2014

By Pendleton County Board of Health

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**Pendleton County Ordinance Eliminating Smoking
in Workplaces and Enclosed Public Places
(100% Smoke-free)
*Revised August 12th 2014***

Public smoking regulations adopted by Pendleton County Board of Health in accordance with authority granted by West Virginia State Law, Chapter 16-211.

Section 1000. Title

This article shall be known as the Pendleton County Smoke-free Air Act of 2001.

Section 1001. Findings and Purpose

The Pendleton 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; and

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.

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.

Accordingly, the Pendleton 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.

Section 1002. Definitions

The following words and phrases, whenever used in this article 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. A “bar” for the purposes of this ordinance shall not include any area where full meals are served, but may include the service of appetizers, and snacks.
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.
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, who 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.

7. "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.

8. "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, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

9. "Restaurant" 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)**.

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 cigar, cigarette, pipe, plant or other smoking equipment 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.

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.

Section 1003. Application of Article to County-Owned Facilities

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

Section 1004. Prohibition of Smoking in Public Places

A. Smoking shall be prohibited in all enclosed public places within the County of Pendleton, 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 Pendleton, 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.
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, 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. Childcare facilities.
19. Bars, which meet the requirements of **Section 1002 (1)** of this article.

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, each employer having an enclosed place of employment located within the County of Pendleton 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 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.

F. Employers shall display, and make accessible to employees, upon request, a copy of the *Pendleton County Clean Indoor Air Regulation* within their facility.

Section 1006. Reasonable Distance

Smoking shall occur at a reasonable distance of **50 feet or more** 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 to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

1. Private residences, except when used as a child care, adult day care or health care facility.
2. Retail tobacco stores.

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” 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 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. Facilities permitting smoking must post second hand smoke advertisement and minors prohibited signage at all entrances.

C. 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.

D. 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 1009. Enforcement

- A. Enforcement of this article shall be implemented by the Pendleton County Health Department, 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 Pendleton.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Pendleton County Health Department.
- D. The 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 have been complied with.
- E. Any owner, manager, operator or employee of any establishment regulated by this article may inform persons violating this article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.
- G. Employers shall display, and make available to employees, upon request, a copy of the *Pendleton County Clean Indoor Air Regulation* within their facility.

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.

Section 1011. Violations and Penalties

- H. 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:

- (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 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.

I. Penalties:

The Pendleton County 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, 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 convictions, shall be punished by a fine of not less that 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.

- D. Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article.

Section 1012. Public Education

The Pendleton 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 owner, 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 ordinance.

Section 1013. Other Applicable Laws

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