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KANAWHA-CHARLESTON
HEALTH DEPARTMENT

Board of Health

Indoor Vaping Regulation

As of January 16, 2020

Arthur B. Rubin DO

Arthur B. Rubin, DO
President

January 16, 2020

Date

KANAWHA-CHARLESTON HEALTH DEPARTMENT

A REGULATION ELIMINATING ELECTRONIC SMOKING DEVICES IN WORKPLACES AND PUBLIC PLACES

Sec. 1000. Title

This regulation shall be known as the Kanawha County and City of Charleston Electronic Smoking Device Regulation of 2020. This regulation does not supersede the existing Kanawha County and City of Charleston Clean Indoor Air Regulation of 2008.

Sec. 1001. Authority

This regulation is adopted in accordance with the authority contained in West Virginia Code § 16-2-11 et seq.

Sec. 1002. Findings and Purpose

The Kanawha-Charleston Board of Health does hereby find that:

According to the Centers for Disease Control (CDC), Electronic cigarettes are not safe for youth, young adults, pregnant women, or adults who do not currently use tobacco products. Additionally, the CDC states that there is no safe nicotine delivery product, and all nicotine delivery products carry a risk.

The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially 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.

E-cigarettes are now the most commonly used nicotine delivery product among youth, surpassing conventional cigarettes in 2014. E-cigarette use is strongly associated with the use of other tobacco products among youth and young adults, including cigarettes and other combustible tobacco products. E-cigarette use among youth and young adults has become a public health concern.

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." " E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear like the smoke emitted by traditional tobacco products.

Accordingly, the Kanawha-Charleston Board of Health finds and declares that the purposes of this regulation are (1) to protect the public health and welfare by prohibiting vaping in public places and places of employment; and (2) to guarantee the right of individuals who do not vape to breathe vape free air, and to recognize that the need to breathe vape free air shall have priority over the desire to vape, and (3) to protect the public health and welfare by prohibiting vaping and the use of electronic cigarette devices in public places and places of employment, (4) discourage youth from initiation of vaping thereby developing a nicotine addiction, (5) facilitate nicotine cessation by active smokers.

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. These devices are referred to by a variety of names, including "e-cigs," "e-hookahs," "mods," "vape pens," "vapes," and "tank systems."

Sec. 1003. Definitions

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

1. "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.
2. "Electronic Smoking Device (E-Cigarette)" means any electronic 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, e - hookah, vape pen or under any other product name or descriptor.
3. "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.
4. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

5. "Enclosed Area" means all space between a floor and ceiling which is under roof and 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.
6. "Healthcare Facilities" 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, weight control, laboratories, offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. "Healthcare Facility" includes all waiting rooms, hallways, private rooms, semi-private rooms, and any adjacent outdoor property under their control.
7. "Healthcare Facilities" does not include Personal Care Homes, Assisted Living Facilities or Residential Board Facilities where they are grandfathered under the West Virginia Supreme Court of Appeals ruling of December 2, 2003.
8. "Grocery Store" means any supermarket, convenience store or other retail food production and marketing establishment.
9. "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.
10. "Place of Employment" means any area under the control of a public or private employer where 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.
11. 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.
12. "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, bars, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters, outdoor service lines and bingo halls. A private residence is not a "public place."

13. "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.
14. "Retail vaping Store" means a retail store utilized primarily for the sale of electronic cigarettes and vaping products or accessories, and in which the sale of other products is merely incidental.
15. "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.
16. "Vaping" means inhaling, exhaling, burning or carrying any electronic cigar, e-cigarette, e-pipe, e - hookah, vape pen or under any other product name or descriptor.
17. "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.

Sec. 1004. Application of this Regulation to Kanawha County or City of Charleston Owned Facilities

All enclosed facilities including buildings and vehicles owned by Kanawha County or the City of Charleston shall be subject to the provisions of this regulation.

Sec. 1005. Prohibition of Vaping in Public Places

- A. Vaping shall be prohibited in all enclosed public places within Kanawha County or the City of Charleston including, but not limited to, the following places:
 1. 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, motels, bars and video lottery rooms.
 2. Elevators, service lines, restrooms, lobbies, reception areas, hallways, enclosed stairwells and any other common-use areas.
 3. All means of public transit, including, but not limited to buses, taxicabs, and other means of public transit under the authority of Kanawha County. This includes public areas for ticketing, boarding, and waiting areas of public transit depots.
 4. Retail and grocery stores.

5. Restaurants, including outdoor seating areas.
6. Public areas of aquariums, galleries, libraries and museums.
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 board, council, commission, committee, including joint committees, or agencies of Kanawha County or the City of Charleston 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 Kanawha County.
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, and any other health care providers.
11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
12. Polling places.
13. Bingo halls that distribute less 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.
14. Fire departments, rescue squads or other community buildings.
15. Auction houses, indoor flea markets and enclosed shopping malls.
 1. 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, facility, or property as a nonsmoking/nonvaping establishment.
 2. In any dispute arising under this regulation, the health concerns of the nonsmoker/nonvaping shall be given precedence.

Sec. 1006. Prohibition of Vaping in Places of Employment

1. It shall be the responsibility of employers to provide a "vape" free workplace for all employees.
2. Within 30 days of the effective date of this regulation, each employer having an enclosed place of employment located within Kanawha County or the City of Charleston, shall adopt, implement, make known and maintain a written vaping policy which shall contain the following requirements: Vaping 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.
3. The electronic smoking device regulation shall be communicated to all employees within three (3) weeks of its adoption.
4. All employers shall supply a written copy of the electronic smoking device regulation upon request to any existing or prospective employee.

Sec. 1007. Reasonable Distance

To ensure that aerosolized vaping product does not enter an enclosed public facility or workplace through entrances, windows, ventilation systems or by any other means, designated vaping/smoking areas shall be located at a reasonable distance of at least fifteen (15) feet or more outside any entrance, exit, operable window or ventilation intake for any building or other facility where vaping is prohibited, if such space is subject to the control of the proprietor, owner, operator or manager for the building or other area where vaping is prohibited

Sec. 1008. Where Vaping is Not Regulated

A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from Sec.1005 and 1006 of this regulation:

1. Private residences, except when used as a childcare, adult day care or health care facility, or homes that are registered with West Virginia Department of Health as a Personal Care Home or Residential Board Facility.
2. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests.
3. 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.

4. 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.
5. Outdoor areas of places of employment except those covered in Section 1005 of this regulation.
 - A. 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. 1009. Posting of Signs

1. "No Vaping" signs or the international "No Vaping" symbol (consisting of a pictorial representation of a burning cigarette or electronic 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 vaping is prohibited by this regulation, by the owner, operator, manager or other person having control of such building or other area.
2. Every public place where vaping is prohibited by this regulation shall have posted at every entrance a conspicuous sign clearly stating that vaping and smoking are prohibited.

Sec. 1010. Enforcement

1. Any owner, manager, operator or employee of any establishment regulated by this regulation shall inform persons violating this regulation of the appropriate provisions thereof.
2. Enforcement of this regulation shall be implemented by the Kanawha-Charleston Health Department, or his or her designee.
3. Notice of the provisions set forth in this regulation shall be given to all applicants for a business license in Kanawha County or the City of Charleston. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Kanawha-Charleston Health Department.
4. The Health Department shall, while an establishment is undergoing otherwise mandated inspections inspect for compliance of this regulation.

Sec. 1011. Violations and Penalties

1. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this regulation to fail to comply with any of its provisions.
2. It shall be unlawful for any person to "vape" in any area where electronic cigarette use is prohibited by the provisions of this regulation.
3. Any person who violates any provision of this regulation shall be guilty of a misdemeanor under Chapter 16 of the West Virginia State Laws. Penalty will be as set forth by Chapter 16-2-15 of the West Virginia State Laws which states:

§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 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 the provisions of this regulation.

Sec. 1012. Public Education

The Kanawha-Charleston 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.

Sec. 1013. 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 regulation.

Sec. 1014. Other Applicable Laws

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

Sec. 1015. Severability

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

Sec. 1016. Effective Date


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

Kanawha-Charleston Board of Health

For More Information, Contact:



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Arthur B. Rubin, DO

State of West Virginia, County of Kanawha to wit: Subscribed and sworn to
before me this 16th day of January 2020
My Commission expires June 29, 2022

I, VERA J. McCORMICK do hereby certify
that this is a true copy from the record.
Teste: VERA J. McCORMICK
Kanawha County Commission

Date 1-23-20 By Vera J. McCormick
Clerk



