

INCLUDING E-CIGARETTES INTO LOCAL CLEAN INDOOR AIR ACT PROTOCOL MODEL POLICY

This model policy has been reviewed by the Tobacco Control Legal Consortium. The Tobacco Control Legal Consortium offers comments and observations based on their experiences with many tobacco control laws and policies in other jurisdictions.

The policy should be reviewed by your county attorney before being presented to the Board.

MONTANA CLEAN INDOOR AIR ACT IMPLEMENTATION PROTOCOL FOR [COUNTY]

Section 1 – Intent, purpose, and scope

- 1.1. Pursuant to MCA § 50-40-102 the Montana Legislature enacted the Montana Clean Indoor Air Act for the following purposes:
 - 1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;
 - 2) to recognize the right of nonsmokers to breathe smoke-free air; and,
 - 3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke or the act of smoking.
- 1.2. The declared purpose of [COUNTY] Clean Indoor Air Act protocol is to prohibit smoking in enclosed public places to:
 - 1) reduce unwanted and unwelcome exposure to secondhand smoke; and,
 - 2) assure a cleaner more hygienic environment for [COUNTY], its residents, and visitors, including children and persons with existing respiratory conditions, while recognizing the threat of smoking to public health and the environment.
- 1.3. All provisions included are in addition to all state and federal laws.
- 1.4. Failure to comply with these regulations will subject individuals, business owners, and/or employers who violate the [COUNTY] Clean Indoor Air Act to the penalty provisions of MCA § 50-40-115.
- 1.5. If any section, paragraph, sentence, clause, or phrase of this protocol should be declared invalid for any reason, such invalidity shall not affect the remaining portions of this protocol. The provisions of this protocol are hereby severable.

Section 2 – Effective date

- 2.1. All provisions established under this protocol are effective as of [DATE OF ADOPTION].

Section 3 – Definitions

Whenever used in this protocol, the following terms shall be construed as follows:

- 3.1. "Department" means the department of public health and human services provided for in MCA § 2-15-2201.
- 3.2. "Enclosed Public Place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:
 - a. restaurants;
 - b. stores;
 - c. public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in MCA § 50-40-201, and state government;
 - d. trains, buses, and other forms of public transportation;
 - e. health care facilities;
 - f. auditoriums, arenas, and assembly facilities;
 - g. meeting rooms open to the public;
 - h. bars and casinos and similar facilities;
 - i. community college facilities;
 - j. facilities of the Montana university system;
 - k. public schools, as provided for in MCA § 20-1-220 and 50-40-104;
 - l. common use areas, including restrooms, lobbies, reception areas, hallways, and other similar places;
 - m. lobbies, hallways, and similar common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple residential facilities;
 - n. shopping malls including connecting walkways, enclosed parking areas and partially enclosed parking areas; and
 - o. indoor sports arenas, including but not limited to sports pavilions, stadiums, organized sports fields, gymnasiums, health spas, boxing arenas, roller and ice rinks, bowling alleys, golf courses, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 3.2, part M, N, and O are not in state law and are not required as part of the CIAA; however, including these sections will increase the protection against secondhand smoke. Much like with the smoking distance provision, if more than one policy change is being addressed, a severability section should be considered. (Section 1.5).

- 3.3. "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations. The term includes but is not limited to taverns, night clubs, cocktail lounges, and casinos.
- 3.4. "Place of Work" means an enclosed room where one or more individuals work.
- 3.5. "Enclosed Room" means an area with a wall on all sides reaching from floor to ceiling, exclusive of windows and doors, and does not include an area completely or partially open to the outside air such as a roofed shelter.
- 3.6. "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- 3.7. "Private Residence" means the personal living quarters of an individual, regardless of the legal status of the property, such as incorporation of a ranch, unless the residence is part of a structure, such as a health care facility, where smoking is specifically prohibited by MCA Title 50, chapter 40, part 1.
- 3.8. "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- 3.9. The word "Board" means the [COUNTY] Board of Health and its designees.
- 3.10. "Designee" means, for purposes of determining who is designated by the department to act on its behalf in enforcement of the Montana Clean Indoor Air Act of 1979, is any entity with which the department has entered into an agreement outlining mutual responsibilities.
- 3.11. "Smoking" or "To Smoke" includes inhaling, exhaling, burning, lighting, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form, including the use of electronic smoking devices and marijuana.
- 3.12. "Electronic Smoking Device" means any device, regardless of whether it contains nicotine, used to deliver nicotine or another substance in any manner for the purpose of inhaling vapor or aerosol from the device. 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.

Section 4 – Smoking in enclosed public places prohibited and places where prohibition inapplicable.

4.1. Places Where Smoking is Prohibited.

Smoking in an enclosed public place is prohibited within [COUNTY], except as

otherwise provided in this section.

4.2. Smoking Distance.

Smoking is not permitted within thirty (30) feet of an enclosed public place or an establishment such that smoke may not enter through its entrances, windows, ventilation systems, or other accesses and circulate to indoor, non-smoking areas.

4.3. Signage.

The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited and that smoking is prohibited within thirty (30) feet of the enclosed public place such that smoke may not enter through its entrances, windows, ventilation systems, or other accesses and circulate to indoor, non-smoking areas.

4.4. Exemptions.

The prohibition of smoking and smoking distance provision do not apply to the following places, whether or not the public is allowed access to those places:

- a. a private residence unless it is used for any of the following purposes, in which case the prohibition of smoking applies:
 1. a family day-care home or group day-care home, as defined in MCA § 52-2-703 and licensed pursuant to MCA Title 52, chapter 2, part 7;
 2. an adult foster care home, as defined in MCA § 50-5-101 and licensed pursuant to MCA Title 50, chapter 5; or
 3. a health care facility, as defined in MCA § 50-5-101 and licensed pursuant to MCA Title 50, chapter 5;
- b. a private motor vehicle;
- c. school property in which smoking is allowed pursuant to the exception in MCA § 20-1-220;
- d. a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and
- e. a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

Section 5 – Enforcement and penalties

5.1. Enforcement.

Per MCA § 50-40-108, the provisions of this part must be supervised and enforced by the department and the department's designees, local boards of

health, and the boards' designees under the direction of the department.

Education and enforcement of smoking prohibitions in Section 4.1 and 4.2 is the responsibility of the managing entity of the public place. If the managing entity is unable to compel compliance with the smoking prohibitions, local law enforcement may be called upon to assist.

5.2. Penalties.

Failure to comply with these regulations will subject individuals, business owners, and/or employers who violate the **[COUNTY]** Clean Indoor Air Act to the penalty provisions of MCA § 50-40-115.