

**CURRY COUNTY
ORDINANCE #2020-02**

**ORDINANCE RESCINDING CURRY COUNTY
ORDINANCE #07-02 AND ENACTING A REVISED
CURRY COUNTY CLEAN INDOOR AIR
ORDINANCE; PROVIDING FOR SMOKE FREE
AREAS; PROVIDING PENALTIES**

WHEREAS, Curry County has previously, on the 2nd day of October, 2007, enacted a Curry County Clean Indoor Air Ordinance; and,

WHEREAS, the New Mexico legislature, during the legislative session of 2019, made statutory amendments and revisions to the State of New Mexico Clean Indoor Air Ordinance; and,

WHEREAS, Curry County wishes to incorporate the statutory changes into its Clean Indoor Air Ordinance.

NOW, THEREFORE, BE IT HEREBY ORDAINED, by the Board of County Commissioners of Curry County that Curry County Ordinance #07-02 be and the same hereby is rescinded and repealed, in its entirety.

BE IT FURTHER ORDAINED, by the Board of County Commissioners of Curry County that the following Ordinance is hereby adopted.

Section 1. **Short Title.** This Ordinance may be cited as the Curry County Clean Indoor Air Ordinance.

Section 2. **Purpose.** One of the duties of government is to protect the public health, safety, and welfare of its citizens. The Board of County Commissioners recognizes environmental tobacco smoke is detrimental to the public health and declares that the purpose of this Ordinance is to protect the public health and safety by prohibiting smoking in indoor public spaces, indoor workplaces, and County properties.

Section 3. **Definitions.** As used in this Ordinance:

A. "Bar" means an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

B. "Cigar bar" means an establishment that:

1) Is a bar as defined in Subsection A of this section; and,

2) Is engaged in the business of selling cigars for consumption by patrons on the premises and generates ten percent (10%) or more of its total annual gross revenue or at least ten thousand dollars (\$10,000) in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least ten percent (10%) of its total annual sales from the sale of cigars in the calendar year after December 31, 2020, not including sales from vending machines, shall not be defined as a cigar bar and shall not thereafter be known as such regardless of sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the County's satisfaction compliance with this definition.

C. "Department" means the New Mexico Department of Health;

D. "Designated outdoor smoking area" means an area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place; provided that the following conditions are maintained:

- 1) Smoking shall not be permitted near any building entrance, including a door window or ventilation system of any facility where smoking is prohibited under the provisions of this Ordinance, so as to prevent secondhand smoke from entering the indoor workplace or indoor public place; and,
- 2) Smoking may be allowed in private vehicles so long as the vehicle is not parked near any building entrance, including a door, window or ventilation system, and the smoking is inside the vehicle and all of the doors and windows are closed so as not to cause pedestrians to walk through the smoke to gain entrance to an indoor work place or indoor public place; and,
- 3) Employees or members of the general public are not required to walk through the smoking area to gain entrance to the indoor workplace or indoor public place.

E. "Employer" means an individual, a partnership, a corporation or the State of New Mexico that employs the services of one or more individuals and includes Curry County;

F. "E-Cigarettes" means any product containing or delivering nicotine or another substance intended for human consumption that can be used by a person in any matter for the purpose of inhaling vapor or aerosol from the product, including a devise, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape pen or under another product name or descriptor;

G. "Enclosed" means any interior space predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers

consist of or include uncovered openings, screened or otherwise partially covered openings or open or closed windows;

- H. "Indoor public place" means the enclosed area within any governmental or non-governmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time;
- I. "Indoor workplace" means any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee loungers, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time;
- J. "Private club" means an organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof used exclusively for the organization's purposes at all times, that is operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation. The organization shall have bylaws or a constitution to govern its activities and shall have been granted an exemption as a club under the provisions of Section 501 of the Internal Revenue Code of 1986, as amended;
- K. "Restaurant" means a coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises;
- L. "Retail tobacco store" means a retail store used primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental, including smoke shops, cigar shops or hookah loungers, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises;
- M. "Secondhand smoke" means:
 - 1) Smoke emitted from, inhaling from, exhaling from, burning, carrying or holding;
 - a) a lighted or heated cigar, cigarette, hookah or pipe; or,
 - b) any other lighted or heated tobacco or plant product intended for inhalation, including cannabis, whether natural or synthetic; or,
 - 2) the aerosol or vapor emitted from inhaling or exhaling or any other use of an e-cigarette;

N. "Smoking" means:

- 1) Inhaling from, exhaling from, burning, carrying or holding:
 - a) a lighted or heated cigar, cigarette, hookah or pipe; or,
 - b) any other lighted or heated tobacco or plant product intended for inhalation, including cannabis, whether natural or synthetic; or,
- 2) Any use of an e-cigarette that creates an aerosol or vapor;

O. "Smoke free area" means any building or other enclosed space where smoking is prohibited;

P. "Smoking-permitted area" means any building or other enclosed space where smoking may be legally permitted; provided that secondhand smoke does not infiltrate any area where smoking is prohibited pursuant to this Ordinance.

Q. "Standalone building" means a building whose heating, air conditioning and ventilation system services only that building.

Section 4. **Smoking Prohibited.**

A. Smoking on any Curry County property, including but not limited to the County fairgrounds, and/or any and all buildings or other structures on the County fairgrounds, County Administration Building, County Courthouse, County Detention Center, as well as any and all other buildings owned by Curry County and the parking lots around said facilities is prohibited;

B. It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted pursuant to this Ordinance, including but not limited to County owned and/or leased vehicles;

Section 5. **Smoking-Permitted Areas.** Notwithstanding any other provision of this Ordinance, smoking-permitted areas include the following:

A. A private residence, unless it is used commercially to provide child care, adult care or health care or any combination of those activities;

B. A retail tobacco store; provided that, for a retail tobacco store established on or after the affective date of this Ordinance, the store must be located in a standalone building;

C. A cigar bar; provided that, for a cigar bar established on or after the affective date of this Ordinance, the cigar bar must be located in a standalone building;

- D. The facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products; provided that smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited under this Ordinance;
- E. A state-licensed gaming facility, casino or bingo parlor;
- F. Private clubs;
- G. Hotel and motel rooms that are rented to guests and are designated as smoking-permitted rooms; provided that not more than ten percent (10%) of rooms rented to guests in a hotel or motel may be so designated;
- H. A site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans and that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a;
- I. A theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production.

Section 6. **Prohibition of Smoking Near Entrances, Windows and Ventilation Systems.** Smoking is prohibited near entrances, windows and ventilations systems of all workplaces and public places where smoking is prohibited by this Ordinance. An individual who owns, manages, operates or otherwise controls the use of any premise which is subject to the provisions of this Ordinance shall established a smoke/vapor free area that extends within a reasonable distance of any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited except County owned buildings and property. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing smoke/vapor and to ensure that smoke/vapor does not enter the building or facility through entrances, windows, ventilation systems or any other means.

Section 7. **Responsibilities of Employers.**

- A. Employers shall provide that their places of employment meet the requirements of this Ordinance.
- B. An employer shall adopt, implement, post and maintain a written smoking policy pursuant to this Ordinance.

Section 8. **Posted Smoke Free and Smoking-Permitted Areas.**

- A. To advise persons of the existence of smoke free areas or smoking-permitted areas, signs shall be posted as follows:

- 1) For each indoor workplace or indoor public place where smoking is prohibited pursuant to this Ordinance, a “NO SMOKING” sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. Posting of “NO SMOKING” signs is the responsibility of the owner, operator, manager or other person having control of the indoor workplace or indoor public place; and,

Section 9. **Enforcement.**

- A. Enforcement of this Ordinance shall be by citation from the Curry County Sheriff’s Office and any other law enforcement officer having jurisdiction within Curry County.
- B. A person may register a complaint regarding an alleged violation pursuant to this Ordinance to initiate enforcement with the Curry County Sheriff’s Department.
- C. The designated enforcement agencies may inspect an establishment for compliance with this Ordinance.

Section 10. **Violation.** It is unlawful for a person who owns, manages, operates or otherwise controls the use of premises subject to regulation under this Ordinance to violate its provisions. The owner, manager or operator of premises subject to regulation shall not be subject to a penalty if a person on the premises is in violation of this Ordinance as long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the person that the person is in violation.

Section 11. **Penalties.** A person twenty-one (21) years of age or older who violates a provision of this Ordinance is subject to:

- A. A fine not to exceed one hundred dollars (\$100) for the first violation;
- B. A fine not to exceed two hundred dollars (\$200) for the second violation within any consecutive twelve-month period of the first violation; and,
- C. A fine not to exceed five hundred dollars (\$500) for the third and each subsequent violation within any consecutive twelve-month period of a previous violation.

Section 12. **Non-Retaliation/Non-Wavier.**

- A. A person or employer shall not discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or patron because that employee, applicant or patron exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 13. **Severability.** If any section, subsection, paragraph, phrase or other portion of this Ordinance shall be declared invalid for any reason whatsoever by a court of competent jurisdiction, then such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance.

Section 14. **Effective Date.** This Ordinance shall be in full force and effect five days after its adoption, approval and publication as provided by law.

PASSED, APPROVED AND ADOPTED this ____ day of April, 2020.

**Curry County Board of
County Commissioners**

Ben McDaniel, Chairman

ATTEST:

(SEAL)

Annie Hogland, County Clerk

Approved as to Legal Sufficiency:

Stephen Doerr, County Attorney