RULES AND REGULATIONS
FOR
Clean Indoor Air
RULE # 7

YELLOWSTONE CITY-COUNTY BOARD OF HEALTH
d/b/a RIVERSTONE HEALTH
RiverStone Health
123 South 27th Street
Billings, MT  59101

[Rule7_2017.04.13finaldraft]
## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preamble</td>
<td></td>
</tr>
<tr>
<td>Section 1 – Authority and Scope of Rules</td>
<td></td>
</tr>
<tr>
<td>Section 2 – Effective Date</td>
<td></td>
</tr>
<tr>
<td>Section 3 – Definition</td>
<td></td>
</tr>
<tr>
<td>Section 4 – General Requirements</td>
<td></td>
</tr>
<tr>
<td>Section 5 – Exemptions</td>
<td></td>
</tr>
<tr>
<td>Section 6 – Enforcement and Violations (this section could include inspection, enforcement, complaints, violations and penalties)</td>
<td></td>
</tr>
<tr>
<td>Section 7 – Conflict of Ordinances (this section addresses conflict between provisions of the rule and any zoning, building, fire, safety of health regulation of Yellowstone County or local municipalities and severability)</td>
<td></td>
</tr>
<tr>
<td>Section 8 – Adoption by Reference (this specifies pertinent state statutes and rules)</td>
<td></td>
</tr>
<tr>
<td>Signature page</td>
<td></td>
</tr>
</tbody>
</table>
Preamble

The Yellowstone City-County Health Department, dba RiverStone Health, is a multi-jurisdictional service district created under an inter-local agreement among the City of Billings, Montana, (“Billings”) the City of Laurel, Montana (“Laurel”) and Yellowstone County, Montana (the “County”) for the purpose of providing a higher level of service than is available through local governments forming such a district and to provide services that are not available through the governments forming such a district. The inter-local agreement creates a City-County Board of Health (the “Board”) which possesses the powers, duties, obligations, and responsibilities granted to local boards of health under 50-2-101, MCA et seq (“Health Department Functions”). Those powers include the authority to appoint a local health officer (the “Health Officer”) who possesses the powers and duties enumerated under 50-2-118, MCA. Health Department Functions include:

1. Adoption of necessary rules and regulations that are not less stringent than state standards found in Title 50 Chapter 40 Montana Code Annotated in order to protect the public health and welfare.
2. Adoption of other regulations that do not conflict with rules adopted by the Montana Department of Public Health and Human Services in order to implement the public health laws.

At a public hearing and public comment duly held on ______________, the Board adopted written findings that based on the evidence in the record, implementing the provisions of this rule protects the public health or environment; and the Board requirements and standards imposed can mitigate the harm to the public health or the environment and is achievable under current technology. The written findings referenced information and peer-review scientific studies contained in the record that formed the basis for the Board’s conclusion and includes information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement outlined in this rule.

Purpose of Regulations

Smoke, (smoking of tobacco or any other smokable product or nicotine vapor system) is an affirmative danger to health and a cause of material annoyance, inconvenience, discomfort, and a health hazard to those who are present in confined spaces. Secondhand smoke is smoke, a by-product of smoking tobacco or smoking any other smokable product or nicotine vapor system and secondhand smoke is harmful to persons with certain respiratory conditions and has also been determined to cause cancer to nonsmokers exposed to secondhand smoke on a frequent basis.

In order to serve public health, safety and welfare, to reduce unwanted and unwelcome exposure to secondhand smoke, to assure a cleaner and more hygienic environment for Yellowstone County, its residents and visitors, to strike a reasonable balance between the needs of people who smoke and the needs of nonsmokers, including children and persons with existing respiratory conditions (while recognizing the threat
to public health and the environment which smoking causes), the declared purpose for Public Health Rule #7 is to prohibit smoking or use of tobacco or any smokable product, plant or other natural or mechanical nicotine delivery system in certain areas which are used or open to the public and certain areas in places of employment.

Wholeheartedly embracing the tenants of the Montana Clean Indoor Air Act, the Board of Health acknowledges its responsibility to ensure the public health is maintained by enforcing regulations to protect the public from direct and indirect exposure to smoke by preventing smoking in public spaces and places of employment. It is with this in mind that the Board of Health has adopted the following reasonable and necessary regulations.

Section 1 – Authority and Scope of Rules

1.1 Pursuant to 50-2-116, MCA, local Boards of Health may adopt regulations not less stringent than state standards in order to seek compliance with the Montana Clean Indoor Air Act.

1.2 Pursuant to 50-2-116 (1)(i) the Board of Health may bring and pursue actions and issue orders necessary to abate, restrain or prosecute the violation of public health laws, rules and local regulations.

1.3 Pursuant to Title 50, Chapter 40, Part 1 of the Montana Clean Indoor Air Act for which the Montana Legislature enacted 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 rights of nonsmokers to breathe smoke–free air.

(3) To recognize that the need to breathe smoke-free air has priority over the desire to smoke.

1.3 These Rule #7 regulations cover specified public spaces including places of employment as defined herein located in Yellowstone County.

1.4 Failure to comply with these regulations will subject individual smokers, business owners and/or employers who violate the Montana Clean Indoor Air Act, to the penalty provisions of M.C.A. Section 50-40-115.

Section 2 – Effective Date

All provisions established under this rule are effective as of [insert date of adoption].

Section 3 – Definitions

Whenever used in these rules and regulations, the following terms shall be construed as follows:

3.1 The word “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.
3.2 The word “Board” means the RiverStone Board of Health and its designees.

3.3 The word “cigarette” means any tobacco, narcotics, herbs, medicated substances, marijuana or any other smokable product enclosed in paper and meant to be smoked.

3.4 The words “electronic cigarette” (e-cigs) means any electronic device that delivers nicotine or other harmful vapor or aerosol for inhalation. E-cigs shall include any refill, cartridge, and any other component of an e-cig.

3.5 The word “Department” means the Department of Public Health and Human Services provided for in M.C.A. 2-15-2201.

3.6 The words “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 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;
   i) community college facilities;
   j) facilities of the Montana university system; and
   k) public schools, as provided for in 20-1-220 and 50-40-104.

3.7 The word “establishment” means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

3.8 The words “incidental to the service of alcoholic beverages or gambling operations” means that at least 60% of the business’s annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

3.9 The word “person” means an individual, partnership, corporation, association, political subdivision, or other entity.

3.10 The words “place of work” means an enclosed room where one or more individuals work.

3.11 The word “pipe” means a narrow tube made from wood, plastic metal, clay or other material with a bowl on one end for containing burning tobacco, narcotics, herbs, medicated substances, marijuana or any other smokable product meant to be smoked by drawing smoke into the mouth.

3.12 The words “shopping mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
3.13 The word “smoke” means the gaseous products (which carry airborne toxic particles) of burning tobacco or something similar to tobacco, or the fumes, vapor and or aerosol resulting from the action of heat on liquid such as occurs in an e-cig or similar nicotine vapor devices.

3.14 The word “smoking” or the words “to smoke” includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as provided for in Title 50, chapter 46. To smoke also includes the use of a device that delivers nicotine or other harmful vapor or aerosol for inhalation.

3.15 The words “sports arena” means sports pavilions, stadiums, (indoor or outdoor) 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.

3.16 The word “violation” means smoking in an enclosed public place, failing to post signs prohibiting smoking in an establishment, allowing smoking in an establishment, place of work, or an enclosed public place, and other similar allowances

Section 4 – General Requirements

4.1 Prohibition of Smoking in Public Places

Smoking, is prohibited in all enclosed public places within Yellowstone County. This includes, but is not limited to the following locations:

a) Libraries, museums, post office buildings, churches and courthouses;
b) Areas available to and customarily used by the general public in business and nonprofit entities patronized by the public;
c) Professional offices, banks laundromats, hotels and motels;
d) Bars and casinos and similar facilities;
e) Convention facilities;
f) Elevators;
g) Facilities used for exhibiting a motion picture, stage, drama, lecture, musical, recital, or other similar performance;
h) Health care facilities;
i) Licensed child care and adult care facilities;
j) Lobbies, hallways, and similar common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple residential facilities;
k) Polling places;
l) Public transport facilities:
a. Buses, taxicabs, and private vehicles used for public transportation;
m) Common use areas:
a. Restrooms, lobbies, reception areas, hallways, and other similar places;

n) Retail stores;
o) Places of meeting or public assembly, including school buildings;
p) Places under control of an agency, board, commission or council when a public meeting is in progress;
q) Schools:
   a. Primary, secondary, and post-secondary education facilities;

r) Shopping mall including connecting walkways, enclosed parking areas and partially enclosed parking areas;
s) Sports arenas, including outdoor arenas;
t) Public swimming pools;
u) Airport

4.2 Prohibition of Smoking in Places of Employment.

   Smoking, including the use of e-cigs is prohibited in all enclosed facilities within places of employment without exception.

4.3 Smoking Distance

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

Section 5 – Exemptions

5.1 Where Smoking is not regulated

   The prohibition does 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 applies:
      a. A family day-care home or group day-care home, as defined in M.C.A. § 52-2-703 and licensed pursuant to Title 52, Chapter 2, part 7;
      b. An adult foster care home, as defined in M.C.A. § 50-5-101 and licensed pursuant to Title 50, Chapter 5; or
      c. A health care facility, as defined in M.C.A. § 50-5-101 and licensed pursuant to Title 50, Chapter 5.
      d. A cottage food operation, as defined in MCA 50-50-102 and registered with the local health authority.
b) School property in which smoking is allowed pursuant to the exception in M.C.A. § 20-1-220.

c) A hotel or motel room designated as a smoking room and rented to a guest; however, not more than thirty-five percent (35%) of the rooms available to rent to a guest may be designated as smoking rooms.

d) 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.

5.2 Exception

The provisions of these regulations shall not apply to any stage performance provided that smoking is part of a theatrical production.

Section 6 – Enforcement, Violations and Penalties

6.1 Enforcement

1) The provisions of Rule #7 shall be supervised and enforced by the Board.

2) In addition to enforcement of these rules by the Board, the local fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with the Montana Clean Indoor Air Act and Rule #7 and shall notify the Board in writing of any violations herein.

3) An owner, manager, operator, or employee of an establishment regulated by the Montana Clean Indoor Air Act or these regulations shall inform persons violating the Act or these regulations of the appropriate provisions thereof.

4) The public can submit a complaint of violation of the Montana Clean Indoor Air Act electronically or by hard copy by accessing the Montana Tobacco Use Prevention Program website at https://ejs.hhs.mt.gov:8445/cars/complaintForm.wems

POSTING OF NO SMOKING SIGNS—signage to be supplied by RiverStone Health

It is the responsibility of the proprietor or manager of an establishment containing enclosed public places to post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily understood, that smoking in the enclosed public place is prohibited. Along with no smoking signs, a sign indicating the setback provision of Rule #7 designating that there is no smoking within thirty (30) feet from the building to include 30 feet from windows and ventilation ducts located on the building, will be placed at all major entrances and exits.

6.2 Penalties Section 50-4-115, M.C.A. states: (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 (public school buildings, public school property), or 50-40-104,
(smoking in enclosed public places). A person who violates 20-1-20 or 50-40-104 is guilty of a misdemeanor
and shall be subject to a fine of not less than $25 or more than $100.

(2) A person who owns, manages, operates or otherwise controls a public place or place of
employment and fails to comply with the provisions of Title 50, chapter 40, (including Local Rule #7), is
guilty of a misdemeanor after a third violation within a 3 year period and shall be warned, reprimanded, or
punished as follows:

(a) a warning for the first violation;
(b) a written reprimand for a second violation; and
(c) within any 3-year period, a fine of:

(i) $100 for a third violation;
(ii) $200 for a fourth violation; and
(iii) $500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for
the purposes of 16-4-401 or by the department of justice for the purpose of 23-5-119, 23-5-177, or 23-5-
611(1)(a) or (1)(c).

Section 7- Conflict of Ordinances

7.1 In an instance where a provision of this Rule is found to be in conflict with a provision of any zoning,
building, fire, safety, or health regulation or code of Yellowstone County, or any municipality within
Yellowstone County, existing on the effective date of this regulation, the provision which is determined
by the Health Officer to establish a higher standard for the protection of the public health, safety, and
welfare shall prevail.

7.2 In an instance where a provision of this Rule is found to be in conflict with a provision of any other
ordinance or code of Yellowstone County, or any municipality within Yellowstone County, on the
effective date of this regulation, the provisions of this Rule shall be deemed to prevail, and such other
provisions of any ordinances or codes are hereby declared superseded to the extent that they may be
found in conflict with this regulation.

7.3 If any section, paragraph, sentence, clause, or phrase of this Rule should be declared invalid for any
reason, such invalidity shall not affect the remaining portions of this rule. The provisions of this Rule are
hereby severable.

Section 8 – Adoption by Reference

8.1 Electronic Nicotine Delivery Systems:

www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm

truthinitiative.org/sites/default/files/The Truth About Electronic Nicotine Delivery Systems. pdf
8.2 Copies of the documents incorporated by reference in this rule may be obtained from RiverStone Health Board of Health, 123 South 27th Street, Billings, MT 59101.

Signature page

PASSED AND ADOPTED BY THE RIVERSTONE BOARD OF HEALTH, this ___ day of ___

CHAIRMAN