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**RULES AND REGULATIONS**  
**FOR**  
**Clean Indoor Air**  
**RULE #7**

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***YELLOWSTONE CITY-COUNTY BOARD OF HEALTH***

d/b/a RIVERSTONE HEALTH

**RiverStone Health**

**123 S. 27<sup>th</sup> St.**

**Billings, MT 59101**

[Rule7\_2017.10.20changes accepted 5:00 p.m.]

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## 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 (“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 (“Board”) which possesses the powers, duties, obligations, and responsibilities granted to local boards of health under § 50-2-101, Montana Code Annotated (“M.C.A.”) *et seq* (“Health Department Functions”). Those powers include the authority to appoint a local health officer (“Health Officer”) who possesses powers and duties enumerated under § 50-2-118, M.C.A.

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 M.C.A. 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.

After public hearings and public comment opportunities held on June 21, 2017 and \_\_\_\_\_, 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-reviewed 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**

Smoking 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. 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 respirator conditions (while recognizing the threat to public health and the environment which smoking causes), the declared purpose for Public Health Rule #7 ("the Rule") 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 ("Act"), the Board acknowledges its responsibility to ensure that 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 has adopted the following reasonable and necessary regulations.

### **Section 1- Authority and Scope of Rules**

- 1.1 Pursuant to § 50-2-116, M.C.A., local Boards of Health may adopt regulations not less stringent than state standards in order to see compliance with the Montana Clean Indoor Air Act.
- 1.2 Pursuant to § 50-2-166, M.C.A., 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:
  - 1.3.1 To protect the public health and welfare by prohibiting smoking in public places and places of employment.
  - 1.3.2 To recognize the rights of nonsmokers to breathe smokefree air.
  - 1.3.3 To recognize that the need to breathe smokefree air has priority over the desire to smoke.
- 1.4 The Rule covers specified public spaces including places of employment as defined herein located in Yellowstone County.
- 1.5 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 § 50-40-115, M.C.A.

### **Section 2 – Effective Date**

All provisions established under the Rule are effective as of March 1, 2018.

### 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 words “electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an electronic smoking device, e-cigarette, e-pipe, vape pen or e-hookah.
- 3.4 The word “Department” means the Department of Public Health and Human Services provided for in § 2-15-2201, M.C.A.
- 3.5 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:
  - 3.5.1 Restaurants;
  - 3.5.2 Stores;
  - 3.5.3 Public and private office buildings and offices, including all office buildings and office of political subdivision, as provided for in § 50-40-201 M.C.A., and state government;
  - 3.5.4 Trains, buses, and other forms of public transportation;
  - 3.5.5 Healthcare facilities;
  - 3.5.6 Auditoriums, arenas, and assembly facilities;

- 3.5.7 Meeting rooms open to the public;
- 3.5.8 Bars;
- 3.5.9 Community college facilities;
- 3.5.10 Facilities of the Montana university system; and,
- 3.5.11 Public schools, as provided for in M.C.A. § 20-1-220 and § 50-40-104.
- 3.6 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.
- 3.7 The words “incidental to the service of alcoholic beverages or gambling operations” means that at least sixty percent (60%) of the business’s annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.
- 3.8 The word “person” means an individual, partnership, corporation, association, political subdivision, or other entity.
- 3.9 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 plant product meant to be smoked by drawing smoke into the mouth.
- 3.10 The words “shopping mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- 3.11 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 electronic smoking device or similar nicotine vapor devices.
- 3.12 The word “smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended

for inhalation, including hookahs and marijuana as provided for in Title 50, Chapter 4, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

3.13 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.

3.14 The definitions under the Act apply to the Rule except as otherwise provided.

#### **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:

4.1.1 Libraries, museums, post office buildings, churches and courthouses;

4.1.2 Areas available to and customarily used by the general public in business and nonprofit entities patronized by the public;

4.1.3 Professional offices, banks, laundromats, hotels and motels;

4.1.4 Bars, casinos and similar facilities;

4.1.5 Convention facilities;

4.1.6 Elevators;

4.1.7 Facilities used for exhibiting a motion picture, theater production, lecture, musical, recital, or other similar performance;

4.1.8 Healthcare facilities;

- 4.1.9 Licensed child care and adult care facilities;
  - 4.1.10 Lobbies, hallways, and similar common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple residential facilities;
  - 4.1.11 Polling places;
  - 4.1.12 Public transport facilities, buses, taxicabs, and private vehicles used for public transportation;
  - 4.1.13 Common use areas, restrooms, lobbies, reception areas, hallways, and other similar places;
  - 4.1.14 Retail stores;
  - 4.1.15 Places of meeting or public assembly, including school buildings;
  - 4.1.16 Places under control of an agency, board, commission or council when a public meeting is in progress;
  - 4.1.17 Schools including: primary, secondary, and post-secondary education facilities;
  - 4.1.18 Shopping mall including connecting walkways, enclosed parking areas, and partially enclosed parking areas.
  - 4.1.19 Sports arenas, including outdoor arenas;
  - 4.1.20 Public swimming pools;
  - 4.1.21 Airports.
- 4.2 Prohibition of Smoking in Places of Employment.  
Smoking is prohibited in all enclosed facilities within places of employment.
- 4.3 Smoking Distance.

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

### **Section 5 – Exemptions**

Smoking is not regulated and the prohibition does not apply to the following places, whether or not, the public is allowed access to those places:

- 5.1 A private residence unless it is used for any other following purposes, in which case the prohibition applies:
  - 5.1.1 A family day-care home, as defined in § 52-2-703, M.C.A., and licensed pursuant to Title 52, Chapter 2, Part 7;
  - 5.1.2 An adult foster care home, as defined in § 50-5-101, M.C.A., and licensed pursuant to Title 50, Chapter 5;
  - 5.1.3 A healthcare facility, as defined in § 50-5-101, M.C.A., and licensed pursuant to Title 50, Chapter 5; or,
  - 5.1.4 A cottage food operation, as defined in § 50-50-102, M.C.A., and registered with the local health authority.
- 5.2 School property in which smoking is allowed pursuant to the exception in §20-1-220, M.C.A.
- 5.3 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.
- 5.4 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.

- 5.5 A private motor vehicle.
- 5.6 Any stage performance provided that smoking is part of a theatrical production.

### **Section 6 – Enforcement, Violations and Penalties**

#### 6.1 Enforcement

6.1.1 The Rule shall be enforced by the Board, pursuant to § 50-40-108, M.C.A., through a complaint driven process. All properly completed complaints will be investigated and enforced by the Board at its own discretion.

6.1.2 In addition to enforcement of the Rule by the Board, the following shall apply:

6.1.2.1 A person who owns, manages, operates or otherwise controls a public place or place of employment shall inform persons violating the Rule of the appropriate provisions thereof or file a complaint against the person(s) in violation of the Rule.

6.1.2.2 Any person may submit a complaint of violation of the Rule electronically or by hard copy by accessing the RiverStone Health website at <https://riverstonehealth.org/our-organization/contact-us/>

6.1.2.3 A person who owns, manages, operates or otherwise controls a public place or place of employment posts a sign, to be supplied by RiverStone Health, 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 will be placed at all major entrances and exits indicating the setback provision of the Rule designating that there is no smoking within thirty (30) feet from the building to include thirty (30) feet from windows and ventilation ducts located on the building.

6.2. Penalties

6.2.1 It is unlawful for a person to smoke in any area where smoking is prohibited under §20-1-220, M.C.A. (public school buildings, public school property), § 50-40-104, M.C.A. (smoking in enclosed public places), or under Rule # 7. A person who violates § 20-1-20, M.C.A., § 50-40-104, M.C.A., or Rule #7 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

6.2.2 A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, M.C.A. or 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:

6.2.2.1 A warning for the first violation;

6.2.2.2 a written reprimand for a second violation; and

6.2.2.3 within any 3-year period, a fine of:

6.2.2.4 \$100 for a third violation;

6.2.2.5 \$200 for a fourth violation; and

6.2.2.6 \$500 for a fifth or subsequent violation.

6.2.3 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 purposes 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 the 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

municipally within Yellowstone County, existing on the effective date of the Rule, 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 the 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 the Rule, the provisions of the 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 the regulation.

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

**Section 8 – Adoption by Reference**

Copies of the documents incorporated by reference in the Rule may be obtained from RiverStone Health, Board of Health, 123 South 27<sup>th</sup> Street, Billings, MT 59101.

**Signature Page**

PASSED AND ADOPTED BY THE RIVERSTONE BOARD OF HEALTH, this \_\_\_\_\_

Day of \_\_\_\_\_, 2017.

\_\_\_\_\_

Chairman, Michael Dennis, PhD.