

**CASCADE CITY-COUNTY BOARD OF HEALTH REGULATION RE: MONTANA  
CLEAN INDOOR AIR ACT AND SMOKING SHELTERS  
[ADOPTED JUNE 3, 2015]**

**Section 1      Legislative Findings**

The Cascade City County Board of Health [Board] finds as follows:

(1) Legislative amendments to the Montana Clean Indoor Air Act [Act] adopted in 2005 declare the public policy of the State of Montana to be as follows:

- a) to protect the public health and welfare by prohibiting smoking in public places and place of employment;
- b) to recognize the right of non-smokers to breathe smoke-free air; and
- c) to recognize that the need to breath smoke-free air has priority over the desire to smoke. [Mont. Code Ann. § 50-40-102].

(2) There is controversy with Cascade County as to the meaning and scope of those provisions of the Act, as evidenced by complaints filed with the Board, culminating in litigation and the recent Montana Supreme Court decision in MC, Inc., et.al., v. Cascade City-County Board of Health, 2015 MT 52

(3) There is a compelling need for clarification as to whether certain structures intended for people that smoke are in compliance with state law and regulation, as interpreted by the Montana Supreme Court.

(4) The Board may adopt rules that implement public health laws, including the Act, so long as they do not conflict with rules adopted by the Montana Department of Health and Human Services, [Mont. Code Ann. § 50-2-116(2)[c](iv)], or other provisions of state law.

**Section 2]      Definitions**

(1) The definitions of words and phrases set forth in Mont. Code Ann.§ 50-4-103 and A.R.M. 37.113.101 apply to any of the same words and phrases whenever used in this regulation.

(2) In addition, the following definitions apply:

- a) “person” means an individual, partnership, corporation, limited liability entity, association, political subdivision, or other entity.
- b) “standalone shelter”, as used in this regulation, means a building designed and constructed for the purpose of allowing individuals who smoke to have shelter from the elements, and where the building or structure is located separate and apart from another building.
- c) “vagrancy issues” refers to activities such as littering, illegal use of drugs or other controlled substances, public urination or defecation, or similar activities.

### **Section 3 Allowable Shelters**

(1) The following types of shelters, and no others, intended for persons who smoke, are allowed, and only under the following stated conditions:

- a) An unenclosed standalone shelter shall be designed and constructed such that it is not attached to another building. It shall have at least one entry or exit door measuring 3'0 X 6'8", in accordance with the requirements of the Americans with Disabilities Act. Any door constructed shall be lockable so as to deter any vagrancy issues during non-operating hours. During all hours of use, the entry or door must remain open and unobstructed.
- b) An unenclosed shelter may be constructed and attached to an existing premise that otherwise does not allow or which is prohibited by law from allowing smoking, but only if the entry/exit door for the shelter is located exclusively from the outside and not from any shared walls with the premises. The doors shall be lockable so as to deter any vagrancy issues during non-operating hours. During all hours of use, the entry or door must remain open and unobstructed.

(2) In addition to the requirements for any shelter identified in Section (1) above, the following additional requirements apply:

- a) In addition to the airway provided by the entry, a minimum of twenty percent (20%) of the entire square footage of the vertical plane forming the shelter's interior must be a permanent opening that does not reduce airflow. This requirement may be achieved by many different configurations, including another entry, one big square, or slots at the top and bottom of the walls.
- b) No shelter may be constructed so as to result in smoking occurring within a reasonable distance of an enclosed public space, such that smoke may enter through that place's entrances windows, ventilation systems or other accesses and circulate to non-smoking areas.

(3) The Board may provide for illustrative examples of shelters that comply with the provisions of this regulation.

### **Section 4 Coordination with other Government Permitting Authorities**

Nothing in this regulation shall constitute compliance with any requirements for design and/or construction as provided in other state laws or in local ordinances, including but not limited to compliance with relevant building codes. Persons constructing a shelter must consult with appropriate state and/or local authorities as to those requirements and receive such permits as required by those entities.

## **Section 5      Enforcement**

(1)      A person desiring to construct a shelter in accordance with this regulation shall consult with the Board or its designee prior to construction, and shall receive approval before proceeding. Upon completion of the shelter, the person shall notify the Board or its designee that the shelter is completed. The Board or its designee shall then inspect the facility to ensure compliance with this regulation, and may then issue a certificate of occupancy or its equivalent. A person aggrieved of a designee's determination either to issue or not issue a certificate of occupancy may appeal that determination to the Board.

(2)      A person who fails to comply with the provisions of this regulation is subject to the penalty provisions of Mont. Code Ann. § 50-40-115. In addition, the Board may proceed to enforce this regulation under Mont. Code Ann. § 50-2-116(1)(i).

## **Section 6      Severability**

If any provision of this regulation is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and provisions of this regulation remain legal and enforceable, the remainder of this regulation shall remain operative and binding.

## **Section 7      Effective Date**

(1)      This regulation shall be effective thirty (30) days after adoption by the Board.

(2)      Any person not in compliance with this regulation as of the effective date shall have no more than sixty (60) days after that date to come into compliance.

*ADOPTED: June 3, 2015*