

## **MONTANA CLEAN INDOOR AIR ACT IMPLEMENTATION PROTOCOL FOR LEWIS & CLARK COUNTY**

By enacting the "Montana Clean Indoor Air Act (Act)" the legislature declared its intent:

- (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.

It is unlawful to smoke in an enclosed public place.

It is unlawful for the proprietor or manager of an establishment containing an enclosed public place not to post signs in conspicuous places 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.

It is unlawful for the proprietor or manager of a non-chartered intrastate bus to allow smoking in all parts of the bus.

It is unlawful for a person who owns, manages, operates, or otherwise controls a place of work or an enclosed public place to allow smoking in the place of work or enclosed public place.

**Reasonable Distance:** Smoking may not occur within a reasonable distance of an enclosed public place such that tobacco smoke may enter through its entrances, windows, ventilation systems or other accesses and circulate to non-smoking areas.

The smoking prohibition and the requirement to post signs do not apply to the following enclosed public places:

- (1) a private residence or personal living quarters of an individual, unless it is used as:
  - (a) a family day-care home or group day-care home;
  - (b) an adult foster care home;
  - (c) a health care facility; or
  - (d) a place of work for other than the individual;
- (2) a private motor vehicle not serving as a place of work for other than the owner of the motor vehicle;

- (3) a hotel or motel room designated as a smoking room and rented to a guest and not serving as a place of work for other than the guest.

The Lewis and Clark City-County Board of Health (Board) shall enforce the Act.

A person may file an anonymous complaint with the Department of Public Health and Human Services (Department) or the Board.

A person may file a signed written complaint with the Department or the Board.

When a complaint is filed, the Board shall conduct an investigation and keep a written record of its findings. A written complaint is proof of a violation unless the investigation conclusively shows otherwise. An anonymous complaint is evidence of a violation only if it is substantiated or corroborated by the investigation. Upon a third violation within three years; or upon a single violation within three years subsequent to a conviction, the Board shall forward its file to the Lewis and Clark County Attorney for prosecution.

A person is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100 if the person smokes in any area where smoking is prohibited.

A person is guilty of a misdemeanor and shall be subject to a fine of not less than \$100 or more than \$500 if the person owns, manages, operates, or otherwise controls an enclosed public place or an enclosed place of employment/work, and either

- (1) allows or fails to prohibit smoking in the enclosed public place or enclosed place of employment/work, or
- (2) fails to post a "smoking prohibited" sign at all public entrances of an enclosed public place.

On a first conviction the person shall be punished by a fine of \$100. On the second conviction the person shall be punished by a fine of \$200. On the third or any subsequent convictions the person shall be punished by a fine of \$500 per conviction. A conviction may not occur unless: (a) there is proof that the person received a warning and/or a written reprimand for at least two other violations occurring prior to but within 3 years of the third violation; or (b) there is a prior conviction within 3 years of the violation.

Within the Act, the following definitions apply:

- 1) "Board" means the Lewis and Clark City-County Board of Health and its designees (Lewis & Clark County Tobacco Use Prevention Program).
- (2) "Cigarette" includes any electronic device, including but not limited to "electronic cigarettes," that can deliver inhaled doses of nicotine by delivering a vaporized solution.
- (3) "Department" means the Department of Public Health and Human Services.
- (4) "Enclosed public place" means an indoor area, room, or vehicle that:
  - a) the general public is allowed to enter, or
  - b) serves as a "place of work."

An "enclosed public space" means an area with:

- a) a roof, and
- b) a wall on all sides reaching from floor to ceiling, exclusive of windows and doors.

An "enclosed public place" does not include an area completely open or "partially open to the outside air." "Partially open" means the complete absence of at least two adjoining/adjacent walls or the complete absence of at least two opposite walls.

An "enclosed public place" includes a temporary building or other structure such as a tent.

The terms "roof" and "wall" apply to temporary structures including awnings or tents.

- (5) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.
- (7) "Smoke" means:
  - (a) the gaseous products (which carry airborne toxic particles) of burning tobacco or something similar to tobacco, or
  - (b) the fumes and/or vapor (which carry airborne toxic particles) resulting from the action of heat on a liquid such as occurs in an e-cigarette.

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- (8) "Smoking" or "to smoke" includes inhaling and exhaling the fumes of tobacco or something similar to tobacco or the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokeable product.
- (9) "Violation" means:
  - (a) smoking in an enclosed public place,
  - (b) failing to post signs prohibiting smoking in an establishment,
  - (c) allowing smoking in an establishment, or place of work, or an enclosed public place.