



TOWN OF WESTBOROUGH MASSACHUSETTS

BOARD OF HEALTH

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TOWN OF WESTBOROUGH REGULATIONS PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES

SECTION 1

The purpose of this regulation is to protect the health of the employees and general public in the town of Westborough

SECTION 2

This regulation is promulgated under the authority granted to the Westborough Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "boards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

SECTION 3

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more

than a *de minimus* amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the town of Westborough.

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Municipal Building: Any building or facility owned, operated, leased or occupied by the Town of Westborough.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Retail tobacco store: an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Westborough Board of Health.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

(a) Smoking is hereby prohibited in Westborough in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).

(b) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited:

- the area within fifteen (15) feet of an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen (15) foot area or to a smoker approaching an entranceway with the intention of extinguishing a tobacco product;
 - the area within fifteen (15) feet of a walk-up food service window and fifteen (15) feet of an outdoor table provided for eating purposes by the food service establishment;
 - smoking bars;
 - nursing homes;
 - public bathing beaches;
 - retail tobacco stores;
 - bleachers at sports fields;
 - common areas of apartment buildings and condominiums;
 - elevators accessible to the public;
 - halls and rooms used for public meetings or gatherings;
 - hallways accessible to the public;
 - indoor stairwells accessible to the public;
 - municipal buildings;
 - public rest rooms;
 - laundromats;
- (c) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(b) of this regulation.

SECTION 5: ENFORCEMENT

- (1) It shall be the responsibility of the owner, operator, employer, manager, or person in charge to provide a smoke free environment as prohibited in Section 4 of this regulation.
- (2) An owner, operator, employer, manager, or person in charge who violates Section 4 of this regulation shall be punished by a fine of:
 - a. \$100 for the first violation;
 - b. \$200 for a second violation occurring within a twelve (12) month period of the date of the first offense; and
 - c. \$300 for a third or subsequent violation occurring within a twelve (12) month period of the second violation.
- (3) The Westborough Board of Health agents may, upon witnessing an individual violating Section 4 of this regulation, issue a fine of \$100.00 to that person
- (4) Each calendar day on which a violation occurs shall be considered a separate offense.
- (5) This regulation shall be enforced by the Westborough Board of Health and its designees.
- (6) Violations of Section 4(a) shall be disposed of by a civil penalty using the noncriminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law

without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

(7) Violations of Section 4 may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in the Town of Westborough Bylaws.

(8) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(9) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 6: SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION 8: VARIANCES

The Board of Health may vary any provision of these regulations with respect to any particular case, when in its opinion, (1) the enforcement thereof would do manifest injustice, and (2) the applicant has proved that the same degree of protection can be achieved without strict application of the particular provision. In cases of a conflict with M.G.L. Ch. 270, §22 (the "Smoke-free Workplace Law), the state law will prevail.

SECTION 9: EFFECTIVE DATE

This regulation shall be effective as of October 1, 2014.

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