



# TOWN OF BURLINGTON

## Board of Health



**Public Health**  
Prevent. Promote. Protect.

### REGULATIONS PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

#### SECTION 1.0: STATEMENT OF PURPOSE

The purpose of this regulation is to protect the health of the employees and general public in the Town of Burlington.

#### SECTION 2.0: AUTHORITY

This regulation is promulgated under the authority granted to the Burlington Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards 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 “[n]othing 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 3.0: DEFINITIONS

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

*Adult-only retail tobacco store (also known as “Retail Tobacco Store” in MGL Ch.270):* An establishment that does not share space with another establishment, that has a separate entrance, that does not sell food, beverages or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco paraphernalia, in which the entry of persons under the the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Burlington Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

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

*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 Burlington.

*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.

*Electronic Nicotine Delivery System:* An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

*Membership Association:* A not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

- i. a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or
- ii. a corporation organized under chapter 180; or
- iii. an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or
- iv. a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

*Municipal Building:* Any building owned, leased, rented or operated by the Town of Burlington.

*Nursing home:* An institution that serves as a residential facility for patients and is licensed pursuant to MGL Ch. 111, §71 and includes convalescent homes, rest homes, charitable homes for the aged, intermediate care facilities for persons with an intellectual disability and assisted living facilities.

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

*Smoking (or smoke):* The inhaling, exhaling, burning or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco product intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

*Smoking bar:* An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a 3 tobacco product as required to be issued by the Town of Burlington; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

*Tobacco Product:* A product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

*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 4.0: SMOKING PROHIBITED**

1. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection 3 below.

2. Smoking is hereby prohibited in Burlington in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-Free Workplace Law”) and 105 CMR 661, including enclosed common areas of multiunit residential buildings.
3. Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
  - a. Smoking Bars (cigar bars and hookah bars)
  - b. Adult-Only Retail Tobacco Stores (tobacconists & vape shops)
  - c. Municipal buildings (required by state law)
4. The use of Electronic Nicotine Delivery Systems is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and wherever smoking is prohibited per Section 4(c) of this regulation.
5. Smoking Bars are prohibited in Burlington.

## **SECTION 5.0: ENFORCEMENT**

1. An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
  - a. \$100 for the first violation;
  - b. \$200 for a second violation occurring within two (2) years of the date of the first violation; and
  - c. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
2. Each calendar day on which a violation occurs shall be considered a separate offense.
3. This regulation shall be enforced by the Board of Health and its designees.
4. Violations of Section 4(2) shall be disposed of by a civil penalty using the non-criminal 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.
5. Violations of Sections 4(1), 4(3), 4(4) and 4(5) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
6. 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.

7. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.
8. For purposes of the issuance of fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

#### **SECTION 6.0: 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 7.0: 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 8.0: EFFECTIVE DATE**

These regulations shall become effective upon publication pursuant to M.G.L. c. 111 §31.

By the Board of Health

Edward Weiner, Ph.D., Chairman  
David McSweeney, Vice Chairman  
Gayle DaMore  
Andrea Sheehan  
Maribeth Welch