

**MARLBOROUGH BOARD OF HEALTH
REGULATION 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 city of Marlborough.

SECTION 2

This regulation is promulgated under the authority granted to the Marlborough Board of Health pursuant to Mass. Gen. Laws c. 111, § 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Mass. Gen. Laws c. 270, § 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

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, including the city of Marlborough, which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time.

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.

Hotels, Motels and B&Bs: Temporary accommodations that are open to the public for rental and are not intended to be a domicile.

Membership association (also known as a private club): A not-for-profit entity which has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and which 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 one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under Mass. Gen. Laws c. 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 Congress of the United States, or otherwise having one or more affiliated chapters by the Congress of the United States, or otherwise having one 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 purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

Municipal building: any building owned, leased or operated by the city of Marlborough.

Nursing home: a residential facility licensed pursuant to Mass. Gen. Laws c. 111, § 71.

Outdoor space: an outdoor area, open to the air at all times and unable to be enclosed by a wall or side covering.

Retail tobacco store: an establishment which is not required to possess a retail food permit and 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; in which the entry of persons under the age of 21 is prohibited at all times; and which maintains a valid permit for the retail sale of tobacco products as required to be issued by the Marlborough 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. Gen. Laws c. 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 Mass. Gen. Laws c. 270, § 22 and/or 105 CMR 661.003. To the extent any of the definitions herein conflict with Mass. Gen. Laws c. 270, § 22 and/or 105 CMR 661.003, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

- (a) 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 in those workplaces listed in subsection (c) below.
- (b) Smoking is hereby prohibited in the city of Marlborough in accordance with Mass. Gen. Laws c. 270, § 22 (commonly known as the “Smoke-Free Workplace Law”).
- (c) Pursuant to Mass. Gen. Laws c. 270, § 22(j), smoking is also hereby prohibited in:
 - 1. Smoking bars;
 - 2. Retail tobacco stores;
 - 3. Municipal-owned parks, playgrounds, athletic fields, and beaches;
 - 4. The area within twenty (20) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty-foot area, nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product;
 - 5. Nursing homes;
 - 6. Membership associations;
 - 7. Hotels, motels, and B&B rooms;
 - 8. Public transportation, bus and taxi waiting areas; and
 - 9. Outdoor space where food and/or beverages are served to the public by employees of restaurants, bars and taverns.
- (d) The use of e-cigarettes is prohibited wherever smoking is prohibited per Mass. Gen. Laws c. 270, § 22 and Section 4(c) of this regulation.

SECTION 5: 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 permitted, 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 offense; and
 - c. \$300 for a third or subsequent violation occurring within two (2) years of the date 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 Marlborough Board of Health and its designees.
- (4) Violations of Section 4(b) above shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Mass. Gen. Laws c. 40, § 21D without an enabling ordinance. The disposition of fines assessed shall be subject to Mass. Gen. Laws c. 111, § 188.
- (5) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Mass. Gen. Laws c. 40, § 21D.
- (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, in writing, with the Marlborough Board of Health to initiate an investigation and request enforcement of this regulation.

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, which shall remain in full force and effect.

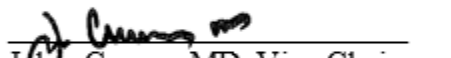
SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

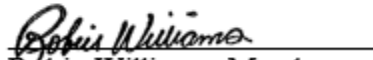
Notwithstanding the provisions of Section 4 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is otherwise prohibited by such fire, health or other regulations.

SECTION 8: EFFECTIVE DATE

This regulation shall be effective as of September 1, 2015.


James Griffin, Chairman


John Curran, MD, Vice Chairman


Robin Williams, Member