

Board of Health
Prohibiting Smoking in Workplaces and Public Places

SECTION 1

The purpose of these Regulations is to protect the health of employees and the public in the Town of Stoughton.

SECTION 2

These Regulations are promulgated under the authority granted to the Stoughton Board of Health (“Board of Health”) pursuant to Massachusetts General Laws Chapter 111, Section 31 providing that “[b]oards of health may make reasonable health regulations” and Massachusetts General Laws Chapter 270, Section 22(j) which states in relevant 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 these Regulations, the following words shall have the following meanings, unless the context requires otherwise:

E-Cigarette: Any electronic device 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. 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 Stoughton.

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.

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

Retail Establishment: An establishment that sells, tobacco products and tobacco paraphernalia, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Stoughton Health Department.

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 as 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 Stoughton in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
- (b) It shall be the responsibility of all employers to provide a smoke free environment for all employees working in an enclosed workplace.
- (c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in the following places:
 - a. Retail Establishment.
 - b. In the area within twenty-five (25) feet of any municipal building entrance or exit.
 - c. Municipal-owned parks and playgrounds.
 - d. Municipal-owned beaches and swimming areas.
 - e. Public transportation, bus and taxi waiting areas.
- (d) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

SECTION 5: Posting Notice of Smoking Prohibition:

(1) Any owner, Employer, or person having control of premises in Stoughton where Smoking is prohibited shall conspicuously display upon the premises "No Smoking" signs or the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it). These signs shall be comparable in size to the sign provided by the Massachusetts Department of Public Health, which are available from the Stoughton Board of Health.

(2) Any owner, Employee, manager, or other person in control of a building, vehicle or vessel who violates these Regulations, 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 offense; and
- c. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.

SECTION 6: ENFORCEMENT

(1) Each calendar day on which a violation occurs shall be considered a separate offense.

(2) This regulation shall be enforced by the Stoughton Health Department and its designees.

(3) Violations of Section 4(a) may be punishable 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 second violation.

(4) The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

- (5) Violations of Sections 4(b), 4(c), and 4(d) may be punishable 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 second violation.

(6) Nothing in this Section shall limit the Board of Health in enforcing these Regulations in a court of competent jurisdiction or any other administrative or judicial forum.

(7) Any violation of these Regulations may, after notice and an opportunity to be heard, result in the revocation or suspension of any license to operate issued by the Board of Health.

(8) Any person may register a complaint to initiate an investigation and enforcement with the Stoughton Health Department.

SECTION 7: SEVERABILITY

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

SECTION 8: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of these Regulations nothing in these Regulations 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 9: EFFECTIVE DATE

This regulation shall take effect on March 12, 2016

**Voted unanimously by the Board of Health during the February 11, 2016 public hearing