

**TOWN OF WESTFORD  
REGULATION  
PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES**

**SECTION 1: PURPOSE**

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

**SECTION 2: AUTHORITY**

This regulation is promulgated under the authority granted to the Westford 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: DEFINITIONS**

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.

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.

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 Westford.

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.

Lodging Home: A dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to four or more persons. The residential portion of boarding houses, rooming houses, dormitories, and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters, and assisted living homes are not included in this definition.

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.

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

Public building: A building or enclosed indoor space owned or occupied by the commonwealth or any political subdivision thereof, including but not limited to the Town of Westford or any department thereof.

Public Place: Any place that is open to and used by the general public, including but not limited to the following facilities: auditoriums, licensed child care locations during hours of operation, schools, clinics, hospitals, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, permanent food permit licensees, indoor sports arenas, public transit facilities, enclosed shopping malls, hotel and motel lobbies, stairwells, hallways, entrances, public rest rooms, elevators accessible to public, town recreational beaches and fields, common areas in privately owned buildings, and rooms or halls when used for public meetings.

Residence: The part of a structure used as a dwelling unit including without limitation: a private

home, townhouse, condominium, apartment, mobile home; vacation home, cabin or cottage; a residential unit in a governmental public housing facility; and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered to be a residence; if the unit is an enclosed indoor space used exclusively as a residence, and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

**Adult-Only Retail Tobacco Store:** (also known as “Retail Tobacco Store” in MGL Ch. 270): An establishment that does not share space with another business, 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 product paraphernalia, in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Westford 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 at the minimum legal sales age or older. The establishment shall not allow anyone under the minimum legal sales age to work at the establishment.

**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 Nicotine Delivery Systems, such as electronic cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

**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 and Regulations of the Westford Board of Health Restricting the Sale of Tobacco Products, as may be amended from time-to-time.

#### **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 those workplaces listed in subsection (c) below.
- b) Smoking is hereby prohibited in Westford in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-Free Workplace Law”).
- c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
  - 1. The area within thirty (30) feet of any public entranceway of building
  - 2. Retail Tobacco Stores.
  - 3. Smoking bars prohibited in Westford.
  - 4. All areas of Hotel, Motel, Inn and Bed & Breakfasts, Lodging Homes, including guest rooms therein.
  - 5. Municipal-owned Parks, Playgrounds, Schools, Athletic Fields and Beaches
  - 6. Nursing Homes
  - 7. Public Transportation, Bus and Taxi Waiting Areas
  - 8. All outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns.
- d) The use of Electronic Nicotine Delivery Systems is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.
- e) No student shall at any time possess any tobacco product, tobacco paraphernalia in any school building, or on any school grounds, at any athletic event, or at any school-sponsored event. No student shall at any time possess any tobacco product or tobacco paraphernalia in any school bus or other vehicle used for school purposes.

#### **SECTION 5: ENFORCEMENT**

- a) It shall be the responsibility of any owner, manager, employee, agent or other person in control of a place subject to this Regulation to ensure compliance with all sections of this Regulation.
- b) Violations of this Regulation may be disposed of using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law and the Town of Westford’s non-criminal disposition bylaw. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

- c) If non-criminal disposition is elected, an owner, manager, employee, agent or other person in control of a building, vehicle, vessel or place 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:
  - 1. \$200 for the first violation and second violation occurring within two (2) years of the date of the first offense; and
  - 2. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- d) If non-criminal disposition is elected, any person who violates this regulation by smoking in a place where smoking is prohibited shall be punished by a fine of ----- for a first offense, ----- for a second offense and ---- for a third and subsequent offense.
- e) Each calendar day on which a violation occurs shall be considered a separate offense.
- f) This regulation shall be enforced by the Board of Health and its designees.
- g) Whoever violates any provision of this Regulation may be penalized by indictment or on complaint brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
- h) The Board of Health, after a public hearing with notice, may refuse to renew, revoke or suspend any Board of Health-issued permit to operate an establishment based on any violation of this Regulation and shall send notice of its decision to the Department of Public Health.
- i) The Board of Health may enforce these Regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.
- j) 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 affect 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: EFFECTIVE DATE**

This regulation shall be effective as of July 1, 2021.

Voted Unanimously to approve by the Westford Board of Health on April 12, 2021