

**CITY OF WORCESTER 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 city of Worcester.

SECTION 2: AUTHORITY

This regulation is promulgated under the authority granted to the Worcester 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.

E-Cigarette: Any product that can deliver nicotine to the user through inhalation of vapor or aerosolization. Electronic cigarette devices include any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately. This term includes such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. It does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold or prescribed solely for the 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 city of Worcester.

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.

Nursing Home: A care facility that is licensed pursuant to Massachusetts General Law Chapter 71, §71.

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 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 occupies exclusively an enclosed indoor space and that is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products; prohibits entry to a person under the minimum legal sales age in Worcester during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sales of tobacco products issues by the Worcester Board of Health and, where required by Mass. General Law Ch. 270, §22, maintains 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", "hookah bars" and "vape shops" or "vape bars".

Tobacco product: Any product containing, 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; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely 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: 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.
- (b) Smoking is hereby prohibited in Worcester 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) within fifty (50) feet of all municipal building entrance and exit ways. For the purposes of this section, municipal buildings shall include any building owned or leased by the city of Worcester, its agencies and authorities, including but not limited to, City Hall, Union Station (including its bus terminals) and all city libraries;
 - (2) (a) on the property or campus that contains any Health Care Provider – Institutional; or, (b) on the grounds of any city-owned library; provided, that the health care provider or library shall install appropriate signage and/or demarcations giving notice of any such no-smoking, tobacco free area; and provided further that, in addition to the campus-wide and library grounds prohibitions, smoking and otherwise consuming any tobacco product or any other combustible product that forms smoke is prohibited within fifty (50) feet of every entrance and exit way of every Health Care Provider – Institutional or city-owned library regardless of whether such fifty foot zone extends to any adjoining property, including any adjoining public or private street;

- (3) within fifty (50) feet of any entrance and exit way of a Health Care Provider Non-Institutional; provided that such Health Care Provider shall install appropriate signage and/or demarcations giving notice of any such no-smoking, tec., area; and , provided further, that no ash tray or similar receptacle shall be located within such 50 foot area;
 - (4) City-owned parks and playgrounds;
 - (5) City Hall Common;
 - (6) City-owned or publically-owned athletic fields, beaches and other swimming areas;
 - (7) Any open space preservation or similar areas in which the city holds any property interest;
 - (8) Any bus, taxi area, including any bus shelter waiting area;
 - (9) Nursing homes
- (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: ENFORCEMENT

- (a) An owner, manager, or other person in control of a building or vehicle who violates this section shall be punished by a civil fine of one hundred (\$100) dollars.
- (b) An individual who smokes in violation of Section 4(b) shall be subject to a civil penalty of one hundred (\$100) dollars pursuant to G. L. Ch. 270, Sec. (m)(2).
- (c) Each calendar day on which a violation occurs shall be considered a separate offense.
- (d) This regulation shall be enforced by the Board of Health and its designees.
- (e) Violations of Section 4(b) 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.
- (f) 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 Section 21D of Chapter 40 of Massachusetts General Law.
- (g) 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: EFFECTIVE DATE

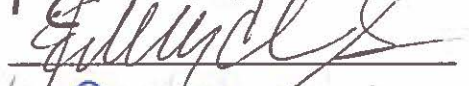
This regulation shall be effective: January 1, 2017


Date adopted: July 25, 2016

Date signed: November 13, 2016

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