

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

**SECTION 1 - PURPOSE**

Whereas ongoing research attests to the health hazards of secondhand smoke and whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas the elimination of secondhand smoke will substantially prevent upper respiratory problems, cancer deaths and heart related deaths<sup>1</sup>, It is therefore the purpose and intention of the Winthrop Board of Health to recognize the right of those who wish to breathe smoke free air by establishing this regulation to protect and improve the public health and welfare of the employees and general public in the Town of Winthrop by prohibiting smoking in workplaces and public places, including certain outdoor spaces as appropriate.

**SECTION 2 - AUTHORITY**

This regulation is promulgated under the authority granted to the Winthrop 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 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

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<sup>1</sup> Office on Smoking and Health (US). The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta (GA): Centers for Disease Control and Prevention (US); 2006. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK44324/>

manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah 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 Winthrop.

**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.

"Membership association" (also known as a private club), 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 or facility owned, operated, leased or occupied by the Town of Winthrop.

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

**Retail tobacco store:** an establishment that is not required to possess a retail food permit 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 or offer of services is merely incidental, and 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 by the Winthrop 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 Massachusetts General Law Ch. 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", "vape 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 or 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 as well as those workplaces listed in subsection (c) below.
- b) Smoking is hereby prohibited in Winthrop 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. Retail Tobacco Stores
  2. Smoking Bars
  3. Town-Owned Playgrounds, Parks, Beaches and Athletic Fields
  4. the area within 25 feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such 25 foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.
  5. Enclosed indoor spaces of Membership Associations (private clubs)
  6. Nursing Homes
  7. Hotels, Motels, Bed & Breakfast Rooms
  8. All outdoor areas of restaurants, bars and taverns where food and/or beverages are sold, served or otherwise consumed
  9. Bus Stop Shelters and 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: ENFORCEMENT**

- a) 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:
  - 1. \$100 for the first violation;
  - 2. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
  - 3. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- b) A person who violates Section 4(c) by smoking or vaping in a place where smoking is prohibited shall be punished by a fine of \$25 for each violation. A person who violates Sections 4(b) and 4(d) by smoking or vaping in a place where smoking is prohibited shall be punished by a fine of \$100 for each violation.
- 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) 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.
- h) 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, approved unanimously by the Winthrop Board of Health on January 19, 2019, shall be effective as of May 1, 2019.

<u>Bill Schmitt</u>	<u>2/26/19</u>
<u>Maria Hunt</u>	<u>2/26/19</u>
<u>Susan Maguire</u>	<u>2/26/19</u>