

**TOWN OF DARTMOUTH  
BOARD OF HEALTH TOBACCO CONTROL REGULATION  
PROHIBITING SMOKING AND THE USE OF NICOTINE DELIVERY PRODUCTS IN  
WORKPLACES and PUBLIC PLACES**

**SECTION 1**

The purpose of this regulation is to protect and improve the public health and welfare by prohibiting smoking and the use of Nicotine Delivery Products in workplaces and public places in the town of Dartmouth.

**SECTION 2**

This regulation is promulgated under the authority granted to the town of Dartmouth 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**

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

**Board:** The Dartmouth Board of Health.

**Business agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section I, Paragraph 1.

**Compensation:** Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

**E-Cigarette:** Any electronic Nicotine Delivery Product 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 solid nicotine or any liquid. 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 1 or more employees at 1 or more workplaces, at any 1 time, including the town of Dartmouth.

**Enclosed:** a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

**Food Establishment:** A Food Service Establishment and/or Retail Food Establishment permitted by the Dartmouth Board of Health.

**Food Service Establishment:** A place where food and/or beverages are prepared and intended for individual portion service, and includes the site at which individual portions are poured and/or provided. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food and/or beverages.

**Membership association (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 Massachusetts General Laws Chapter 180; or
- iii. an established religious place or worship or instruction in the town of Dartmouth 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 Buildings:** Any buildings owned, operated, leased, occupied and/or under the control of the Town of Dartmouth, except public school grounds in compliance with M.G.L. c.71 §2A, 37H commonly referred to as the "Education Reform Act, but not limited to Town Hall, Council on Aging sites, School Buildings, School Administration Buildings, Police Stations, Fire Stations, Library, Maintenance / Repair Buildings. Water Treatment Plants, Sewer Treatment Plants, and office buildings under the control or jurisdiction of the Town of Dartmouth.

**Nicotine Delivery Product:** Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery product includes, but is not limited to e-cigarettes.

**Nursing Home:** A facility licensed by the Commonwealth of Massachusetts defined under M.G.L. c.111 § 71.

**Outdoor Service Areas:** Any outdoor space of an establishment, including but not limited to patios, decks and porches that is under the control of the management of said establishment where food and/or beverages are sold to consumers, served to consumers, or may otherwise be consumed or carried by consumers.

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

**Permit Year:** January 1 to December 31.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to, an owner, operator, manager, proprietor or person in charge of any  
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building, establishment, business, restaurant, Membership Association or retail store, or the Business Agents or designees of any of the foregoing.

**Retail Food Establishment:** Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes, but is not limited to, supermarkets, grocery stores, convenience stores, and delicatessens.

**Retail tobacco store:** An establishment which 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 is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the **Dartmouth** Board of Health.

**Smoking or smoke:** The lighting of a cigar, cigarette, cigarillo, pipe or other tobacco product or possessing a burning lighted cigar, cigarette, cigarillo, 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 primarily is 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 the tobacco products; prohibits entry to a person under the age of 21 years of age 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 sale of tobacco products as required to be issued by the Dartmouth Board of Health; and maintains a permit to operate a smoking bar issued by the department of revenue.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

**Workplace:** An indoor area, structure or facility or a portion thereof, at which 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.

**Work space or work spaces:** An enclosed area occupied by an employee during the course of his employment.

#### **SECTION 4: SMOKING PROHIBITED**

(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace and/or workspace.

(2) Smoking and the use of Nicotine Delivery Products is hereby prohibited in the town of Dartmouth in accordance with M.G.L. c. 270, §22.

(3) Pursuant to M.G.L. c. 270, §22(j) smoking and the use of Nicotine Delivery Products is also hereby prohibited in the town of Dartmouth in membership associations, nursing homes, retail tobacco stores, smoking bars, Outdoor Service Area portions of a Food Service Establishment, town-owned playgrounds, parks, beach/pool areas, and recreational facilities, and within twenty-five (25) feet of all entrances, exits, operable windows and air supply intakes at municipal buildings. Smoking is also prohibited during the private charter or rental of a limousine, bus or van where a driver is provided as part of the charter or rental. All community events must be smoke-free and adequate "no smoking" signs approved by the Board of Health must be posted at the event.

## 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 or the use of Nicotine Delivery Products in a place where smoking or the use of Nicotine Delivery Products is prohibited, shall be punished by a fine of:
1. A fine of one hundred dollars (\$100) for the first violation.
  2. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200).
  3. In the case of a third violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case a permitted Food Establishment, suspension of the establishment's permit for seven (7) consecutive calendar days.
  4. In the case of a fourth violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for thirty (30) consecutive calendar days.
- (2) If an owner, manager or other Person in control of any permitted Workplace, including Food Establishments and Membership Associations governed by this regulation violates this section repeatedly, or demonstrates egregious noncompliance with this regulation, the Board may suspend or revoke its permit to operate and shall send notice of said suspension or revocation to the Town Licensing Board and the Massachusetts Department of Public Health.
- (3) Each calendar day on which any violation of these Tobacco Control Regulations exists shall be deemed to be a separate violation.
- (4) Violations of this regulation may be found upon sufficient evidence of Smoking or the use of Nicotine Delivery Products, and shall not be limited to the discovery of actively burning tobacco and non-tobacco products in a Workplace, Public Place, Membership Association or Food Establishment.
- (5) If applicable, the Board shall provide written notice to a permit holder/owner, or his/her Business Agent of the intent to suspend or revoke a "Food Establishment Permit".
1. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder/owner, or his/ her Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.
  2. Notice of the intent to revoke a permit shall be given by the Board to the permit holder/owner, or his/ her Business Agent in writing. The notice shall specify the reason(s) for which the permit is to be revoked and that the revocation shall be imposed at the end of the ten (10) days following service of such notice unless a written request for hearing is filed with the Board of Health by the permit holder within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the permit shall be revoked. If a written request for a hearing is filed within the ten (10) day period, a hearing shall be scheduled no earlier than seven (7) days after the date of said filing. The permit holder/owner, or his/her Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.
  3. If applicable, a permitted establishment will be closed and prohibited from operating during such time that its Food Establishment permit has been suspended or revoked for violation of this regulation.

(6) The Board and its designees shall enforce this regulation.

(7) Violations of Section 4.2 shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of c. 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to M.G.L. c. 111, § 188.

(8) Violations of Section 4.3 may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in M.G.L. c. 40 § 21D.

(9) Any person may register a complaint to initiate an investigation and enforcement with the Board or the local inspection department of the equivalent.

#### **SECTION 6: SEVERABILITY**

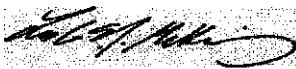
If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

#### **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 adopted and effective upon publication in summary form in the Legal Notices Section of the Chronicle. Authorized by the Dartmouth Board of Health on December 19, 2018. Effective upon publication date December 26, 2018.



Leslie E.J. McKinley



Thomas W. Hardman

Lynne Brodeur, Chair

Date

January 2, 2019

A true and exact copy

