

**TOWN OF AMHERST
REGULATION PROHIBITING SMOKING and VAPING
IN WORKPLACES and PUBLIC PLACES**

SECTION 1: PURPOSE

The purpose of this regulation is to protect the health of employees in their workplaces from exposure to secondhand smoke and to protect the health of the general public from extended exposure to secondhand smoke in places where they congregate. Scientific evidence indicates a risk from exposure to secondhand smoke and that it causes disease and premature death in children and adults.¹ E-cigarettes contribute to indoor air pollution which can exceed the smoke-free level recommended by the Surgeon General.² Depending on the conditions high levels of secondhand smoke can occur in outdoor areas.³

SECTION 2: AUTHORITY

This regulation is promulgated under the authority granted to the Amherst 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:

“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 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 (which includes nicotine delivery products) and tobacco paraphernalia, 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 Amherst Board of Health.

"Compensation", money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-cigarette aerosol (vape): The aerosol produced by heating a liquid that contains nicotine, flavorings, chemicals, heavy metals, volatile organic compounds, and heavy metals such as

nickel, tin, and lead.¹ Users inhale this aerosol into their lungs. Bystanders can also breathe in this aerosol when the user exhales into the air.

“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 combustible 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 perform 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 Amherst.

“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.

"Municipal Building", any building or facility owned, operated, leased or occupied by the Town, including but not limited to, Town Hall, Bangs Community Center, Department of Public Works, Police and Fire Stations.

“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 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 cigarettes, electronic cigars, electronic pipes or other similar products that rely on vaporization or aerosolization.

“Smoking Bar”, an establishment that (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of tobacco products and prohibits the entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the town of Amherst; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. “Smoking bar” shall include, but not be limited those establishments that are commonly known as “cigar bars” and “hookah 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 nicotine delivery systems or any other similar products, that rely on vaporization or aerosolization regardless of nicotine content in the product. “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

- (1) It shall be the responsibility of the employer to provide a smoke and vape free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (4) below.
- (2) To the extent prohibited by M.G.L. Ch. 270, §22(j)(commonly known as the “Smoke-free Workplace Law”) and 105 CMR 661, smoking is hereby prohibited in Amherst.
- (3) The use of e-cigarettes and other electronic nicotine delivery systems is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4 of this regulation.

(4) In addition to the prohibitions contained in M.G.L, Ch. 270, §22, M.G.L, Ch. 111, §31 and M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited:

- a) in nursing homes as defined in M.G.L. Ch, 111, §71;
- b) in vehicles controlled by an employer or used in furtherance of an employer's business;
- c) in all Inn, Bed & Breakfast, Hotel and Motel Rooms.
- d) in any enclosed workplace which employs only the owner and no other employee if: (1) the workplace is used to meet with or receive customers or clients, or (2) the workplace shares a ventilation system with any other workplace or public place;
- e) in Adult-Only Retail Tobacco Stores;
- f) in all outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns;
- g) in the area within twenty feet of any Municipal Building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty-foot area;
- h) on Town-owned playgrounds, parks, recreation areas, athletic fields and swimming areas;
- i) in designated waiting areas for public transportation services;
- j) in vehicles of ride-sharing services while they are engaged in providing rides to the public.

(5) Smoking Bars are prohibited in the Town of Amherst.

SECTION 5: ENFORCEMENT

(1) An owner, manager, or other person in control of a building or vehicle who violates this section by allowing 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.

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

(3) This regulation shall be enforced by the Board of Health and its designees.

(4) Violations of Section 4.2 shall, in accordance with M.G.L. Ch. 270, §22, be disposed by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.

(5) Violations of Section 4.3, 4.4, and 4.5 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.

(6) In addition to civil penalties, the Board may enforce these regulations by any means available under the laws of the Commonwealth including the initiation of a civil lawsuit to enjoin any violations of these regulations.

(7) If an owner, manager or other person in control of a building or vehicle violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may, pursuant to M.G.L. Ch. 270, §22(1) and in accordance with any other applicable law or regulation, revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(8) 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.

Passed by unanimous vote of the Amherst Board of Health on XX/XX/XXXX. Members:

Stephen George _____

Nancy Gilbert, Chair _____

Maureen Millea _____

Timothy Randhir _____

John Tobiason _____

REFERENCES

1. *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. <https://www.ncbi.nlm.nih.gov/books/NBK44324/> (accessed 12/1/2020)
2. National Academies of Sciences, Engineering, and Medicine; Health and Medicine Division; Board on Population Health and Public Health Practice; Committee on the Review of the Health Effects of Electronic Nicotine Delivery Systems; Eaton DL, Kwan LY, Stratton K, editors. *Public Health Consequences of E-Cigarettes*. Washington (DC): National Academies Press (US); 2018 Jan 23. 3, E-Cigarette Devices, Uses, and Exposures. <https://www.ncbi.nlm.nih.gov/books/NBK507187/> (viewed 1/26/2021)

(The quote is from page 84.)
3. Potera, C. *Outdoor Smoking Areas: Does Science Support a Ban?* *Environ Health Perspect*. 2013 Jul; 121(7): a229 (accessed 1/9/2021)