

**Regulation of the City of Northampton Board of Health  
Prohibiting Smoking in Workplaces and Public Places**

**A. Statement of Purpose:**

The City of Northampton Board of Health recognizes the rights of those who wish to breathe smoke free air and establishes this regulation to protect and improve public health and welfare by prohibiting smoking in workplaces and municipal owned parks and recreation areas.

**B. Authority:**

This regulation is promulgated pursuant to the authority granted to the City of Northampton Board of Health by Massachusetts General Laws Chapter 111, Section 31 that Boards of Health may make reasonable health regulations and Massachusetts General Laws Chapter 270, Section 22(j).

**C. Definitions:**

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

**Board:** The Board of Health of the City of Northampton.

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

**E-Cigarette:** Any electronic device 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 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 Northampton.

**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/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:

1. A society, organization or association of a fraternal nature that operates under the lodge system, and having one (1) or more affiliated chapters or branches incorporated in any state; or
2. A corporation organized under *chapter 180*; or
3. An established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation or
4. A veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having one (1) or more affiliated chapters or branches incorporated in any state.
5. Criteria used to determine whether a membership association/private club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02.

If a membership association holds an alcoholic beverage license, said license shall be a "club license" as defined in M.G.L. Ch. 138, Section 12 and by the Massachusetts Alcohol Beverage Control Commission.

**Outdoor Seating:** Seating on a patio, sidewalk, or other outdoor seating portion of restaurant or bar whether covered or not.

**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 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 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Northampton 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 Mass. 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" 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 and 105 CMR 661, the definition contained in this regulation shall control.

#### **D. Smoking Prohibited:**

1. It shall be the responsibility of the employer to provide a smoke free workplace for all employees. Smoking is hereby prohibited in Northampton in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law").
2. Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
  - a. Smoking bars
  - b. Retail tobacco stores
  - c. Twenty-five (25) foot buffer zones around municipal building entrances and exits
  - d. Municipal-owned parks and playgrounds
    - i. The effective date for the prohibition of smoking in municipal-owned parks and playgrounds shall be January 1, 2015.
    - ii. Look Park, in its entirety, falls under this regulation with the exception of the Garden House Banquet Hall. Smoking is permissible at a designated smoking area, located outside the Garden House Banquet Hall, away from all operable windows and doors.
  - e. Municipal-owned athletic fields
  - f. Municipal-owned swimming areas
  - g. Membership Associations/ Private Clubs
  - h. Nursing homes
  - i. All outdoor areas of restaurants, bars, taverns where food and/or beverages are sold, served or otherwise consumed or carried
  - j. Public transportation, bus and taxi waiting areas
3. 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.

**E. 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 in a place where smoking is prohibited, shall be punished by a fine of:
  - a. First Violation – a fine of one hundred dollars (\$100.00)
  - b. Second Violation – a fine of two hundred dollars (\$200.00)
  - c. Third Violation – a fine of three hundred dollars (\$300.00)
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 D(2) 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.
5. Violations of Sections D(1) and D(3) 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. 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 the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.
7. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

**F. Variances Prohibited:**

There shall be no variance to any paragraph or provision of this regulation effective as of the effective date of this regulation.

**G. Severability:**

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

**H. Conflict with Other Laws or Regulations:**

Notwithstanding the provisions of Section D of 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.

**I. Effective Date:**

This regulation shall be effective as of June 1, 2014.

**J. Signatures:**

Name	Signature	Date
Donna Salloom - Chair		March 20, 2014
Suzanne Smith, MPH, MD		3/20/2014
Joanne Levin, MD		3/20/2014
Cynthia Suopis, PhD		3/20/14
William Hargraves		3/20/14

A public hearing was held on: March 20, 2014