

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

SECTION 1

The purpose of this regulation is to protect the health of the employees and general public in the Town of Leicester.

SECTION 2

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

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 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 one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Leicester.

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.

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 Leicester 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.

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 Leicester 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. The area within fifteen (15) feet of any ATM machines, any bleachers and dugouts at outdoor recreational facilities, entranceways accessible to the public, any air intake vent feeding the ventilation system of a building, except that this shall not apply to a smoker transiting through such fifteen (15) foot areas nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product, nor to a smoker walking along a public sidewalk or street. One owner, manager or employee of an

establishment open to the public may smoke nearer to the entranceway than 15 feet, if necessary to monitor their business, but no closer than three feet from the entrance.

2. The Leicester Town Common during concerts and other public gatherings, except an area no larger than 25% of the total area being used may be set aside as an adult-only smoking area for people to smoke
 3. Bus shelters, bus stops and lines leading to bus stops, including school bus stops and school bus lines.
 4. Hotel and motel rooms that are rented to guests that are designated as smoking rooms. No more than 25% of the rooms may be designated as smoking rooms, and the entire ventilation system serving this area must be separate from the ventilation system serving the rest of the facility, and must be positively vented to the outdoors within two years of the effective date of this regulation.
- (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: YOUTH POSSESSION

No person under the age of 18 may smoke a cigarette, cigar or any tobacco anywhere within the Town of Leicester, at any time.

SECTION 6: 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. \$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) Any person who violates this section while on school grounds will be subject to a \$100 fine.
- (3) Each calendar day on which a violation occurs shall be considered a separate offense.
- (4) This regulation shall be enforced by the Board of Health and its designees. The Superintendent of Schools and his/her designees may enforce these regulations on school grounds.

(5) 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.

(6) Violations of Section 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.

(7) Violations of Section 5 shall be disposed of accordingly:

a) Minors smoking on school grounds will be subject to confiscation of any smoking materials by school authorities, along with any penalty school authorities choose to employ. At their option, the Superintendent of Schools or his designee may request the Leicester Police Department or the Board of Health to enforce these regulations on school grounds for specific instances of violations.

b) Minors smoking while not on school grounds, the following penalties may be substituted for the normal penalties listed above:

- First offense: the surrender of any smoking materials, plus a warning.

- Second offense: the surrender of any smoking materials, and attendance at a 2-hour smoking cessation/education class as specified by the Board of Health.

- Third or subsequent offense: the surrender of any smoking materials, and performance of 15 hours of community service within the Town.

c) Parents and/or Guardians may request the return of confiscated smoking materials with 10 days of the date of confiscation; after said time the Leicester Board of Health will destroy the smoking materials.

(8) 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.

(9) 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 7: 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 8: 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 9: EFFECTIVE DATE

This regulation shall be effective as of September 30, 2014.

Approved by:


Robin Wood, Chair


Debra Rigiero, Vice-Chair


Christopher M. Montiverdi, Member