



Town of Reading Massachusetts

**Community Services
Health**

Health Regulations

Section 16 – Tobacco

SECTION 16 PROHIBITING SMOKING and TOBACCO and NICOTINE PRODUCTS USE in WORKPLACES and PUBLIC PLACES

16.1 PURPOSE

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 U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); and

Whereas public health authorities, including the Surgeon General and the National Cancer Institute, have found that smokeless tobacco use is hazardous to health and can lead to nicotine addiction; and

Whereas the National Cancer Institute states that chewing tobacco and snuff contain 28 cancer-causing agents and the U S National Toxicology Program has established smokeless tobacco as a "known human carcinogen;" and

Whereas, the National Cancer Institute and the International Agency for Research on Cancer report that the use of smokeless tobacco causes oral, pancreatic, and esophageal cancer; and

now, therefore, the Board of Health recognizes the right of those who wish to breathe smoke free air and the adverse health effects of using smokeless tobacco and nicotine containing products establishes this regulation to protect and improve the public health and welfare.

16.2 AUTHORITY

This regulation is promulgated under the authority granted to the Reading 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."

16.3 DEFINITIONS

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

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.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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 1 Paragraph 1.

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

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Customer Service Area: An area of the workplace that a business invitee may access.

Distinguishable: Perceivable by either the sense of smell or taste.

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 or more employees at one or more workplaces, at any one time, including the Town of Reading.

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.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Lodging House: A building containing four or more lodging units.

Lodging Unit: One or more rooms for the semi-permanent use of one, two, or three individuals not living as a single housekeeping unit and not having cooking facilities. "Lodging unit" shall include rooms in boardinghouses, lodging houses tourist homes or rooming houses. It shall not include convalescent, nursing or rest homes; dormitories of charitable, educational or philanthropic institutions; or apartments or hotels.

Membership Association: 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 Reading 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.

Minor: Any individual who is under the age of twenty-one (21).

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

Public Building: A building owned by the Town of Reading or an enclosed indoor space occupied by a department or agency of the Town of Reading which is located in a building not owned by the Town of Reading.

Public Transportation Conveyance: A vehicle used in mass public transportation or in the transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, state transportation department; or a vehicle open to the public that is owned by, or operated under the authority of a business, including tour vehicles, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or another vessel, shall not be considered a public transportation conveyance.

Residence: The part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin or cottage; a residential unit in a governmental public housing facility; and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered to be a residence; if the unit is an enclosed indoor space used exclusively as a residence, and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

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 is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid Tobacco Product Sales Permit as required by Section 6 of this regulation.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

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 MGL Chapter 270 Section 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".

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 hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "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.

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.

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

16.4 SMOKING and USE OF TOBACCO and NICOTINE PRODUCTS PROHIBITED

- 1** It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- 2** Tobacco and nicotine use shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, nursing homes, cafeterias, employee lounges, staircases, restrooms, restaurants, cafés, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meals tax on the purpose; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in Section 9C of Massachusetts General Laws Chapter 112, group child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under Section 38 of Massachusetts General Laws Chapter 10 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.
- 3** Tobacco and nicotine use shall be prohibited in all outdoor areas of restaurants, bars, taverns and any other outdoor place where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the public, served to the public, or otherwise consumed or carried by the public.
- 4** A person shall not smoke or use a tobacco product or nicotine containing product in a public building or in a building or in a vehicle or vessel owned, leased, or otherwise operated by the Town of Reading or in a space occupied by the Town of Reading which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in Section 11A of Massachusetts General Laws Chapter 30A, Section 23A of Chapter 39 and Section 9F or Chapter 34, or in a courtroom or courthouse.
- 5** A person shall not use a tobacco product or nicotine containing product on any playing field in the Town of Reading.

16.5 RETAIL SALE OF TOBACCO AND NICOTINE PRODUCTS

- 1** No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco or nicotine delivery products to a minor.
- 2** No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product at retail, except in smoking bars and retail tobacco stores.

- 3** Cigars:
 - i** No person shall sell or distribute or cause to be sold or distributed a single cigar.
 - ii** No person shall sell or distribute or cause to be sold or distributed any original factory wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
 - iii** This Section shall not apply to:
 - a** The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Reading.

- i** The Reading Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

16.6 TOBACCO PRODUCTS SALES PERMIT

- 1** No person shall sell or otherwise distribute tobacco at retail within Reading without first obtaining a Tobacco Product Sales Permit issued annually by the Reading Board of Health. Only owners of establishments with a permanent, non-mobile location in Reading are eligible to apply for a permit and sell tobacco products at the specified location in Reading.
- 2** As part of the application process for a Tobacco Products Sales Permit, the applicant will be provided with a copy of this regulation. Each applicant shall sign a statement declaring that the applicant has read this regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the requirements of state law and this regulation.
- 3** Each applicant shall provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue.
- 4** The fee for a Tobacco Products Sales Permit shall be determined annually by the Reading Board of Health. All such permits shall be renewed annually by January 1.
- 5** A separate Tobacco Products Sales Permit is required for each retail establishment selling tobacco.
- 6** Tobacco Products Sales Permits shall be displayed at the permitted establishment in a conspicuous place.
- 7** Issuance of a Tobacco Products Sales Permit shall be conditioned on the applicant's consent to unannounced, periodic inspections of the permitted establishment to ensure compliance with this regulation.
- 8** A Tobacco Products Sales Permit shall not be renewed if the permit holder has failed to pay any fines issued pursuant to the regulation and the time to appeal the fines has expired.
- 9** At any given time, there shall be no more than nineteen (19) Tobacco Product Sales Permits issued in Reading reduced by the number of permits not renewed pursuant to Section 6(10) of this regulation. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.
- 10** As of August 1, 2017, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Reading Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product

Sales Permits under paragraph 9 shall be reduced by the number of the retired permits.

- 11 A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 1,000 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
- 12 Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

16.7 EXEMPTIONS

Notwithstanding Section 4, smoking may be permitted in the following places and circumstances:

- 1 Private residences; except during such time when the residence is utilized as part of a business as a group child care center, school age day care center, school age day or overnight camp, or a facility licensed by the Office of Child Care Services or as a health care related office or facility.
- 2
 - i Premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:
 - a open to the public; or
 - b occupied by a non-member who is not an invited guest of a member or an employee of the association; or
 - c rented from the association for a fee or other agreement that compensates the association for the use of such space.
 - ii Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection.
- 3 A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to Section 7 of this regulation.
- 4 By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production, and if permission has been obtained from the Reading Board of Health;
- 5 By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university or in a professional testing laboratory as defined by regulation of the Department of Public Health;
- 6 Religious ceremonies where smoking is part of the ritual; and
- 7 A Retail Tobacco Store

16.8 SIGNAGE REQUIREMENTS

- 1 A designated smoking room in a hotel, motel, inn, bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces; and in the interior of the room.

Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with Section 4.

- 2 Every area in which smoking is prohibited by law shall have 'no smoking' signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.
- 3 Additional signs may be posted in public areas, such as the following areas: lobbies; hallways; cafeterias; kitchens; locker rooms; customer service areas; offices where the public is invited; conference rooms; lounges; waiting areas; and elevators.
- 4 Approved signs and templates for signage design may be obtained from the Department of Public Health or the Reading Board of Health.
- 5 It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.

16.9 ANTI-PREEMPTION

Nothing in this regulation shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this regulation shall preempt further limitation of smoking by the Commonwealth or any department, agency or political subdivision of the Commonwealth.

16.10 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:
 - i \$100 for the first violation;
 - ii \$200 for a second violation occurring within 24 months of the date of the first offense; and
 - iii \$300 for a third or subsequent violation occurring within 24 months of the second violation.
- 2 Each calendar day on which a violation occurs shall be considered a separate offense.
- 3 If an owner, manager or other person in control of a building, vehicle violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Reading 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.
- 4 This regulation shall be enforced by the Board of Health and its designees.
- 5 An individual or person who violates this regulation by smoking in a place where smoking is prohibited shall be subject to a civil penalty of
 - i \$100 for the first violation;
 - ii \$200 for a second violation occurring within 24 months of the date of the first offense; and
 - iii \$300 for a third or subsequent violation occurring within 24 months of the second violation.
- 6 For violations of this regulation other than by smoking in a place where smoking is prohibited, as an alternative to criminal prosecution, such violations may also be considered civil violations. Each enforcing agency shall dispose of a civil violation of this section by 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.
- 7 If an owner, manager or other person in control of a building or vehicle violates this regulation repeatedly, demonstrating egregious non-compliance 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.

- 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.
- 9** Pursuant to Massachusetts General Laws Chapter 270, Section 22, the supreme judicial court or the superior court shall issue appropriate orders to enforce this regulation at the request of the enforcing agency.
- 10** The Reading Board of Health shall report annually to the Commissioner of Public Health, beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines.
- 11** An individual, person, entity or organization subject to the smoking prohibitions of this regulation shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation, to a person or entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint of furnishing information during any period of work or time of employment, shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about such place of work or to the public.

16.11 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.

16.12 CONFLICT WITH OTHER LAWS OR REGULATIONS

Nothing in the provisions of Section 4 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.

16.13 EFFECTIVE DATE

This regulation shall be effective as of August 1, 2017.

Legal Notice:	January 23, 2017
Public Hearing:	February 6, 2017
Vote by Board of Health:	March 22, 2017
Legal Notice:	April 13, 2017
Certified copy to MassDEP:	April 26, 2017