



TOWN OF BRAintree
BOARD OF HEALTH
1 J.F.K. Memorial Drive Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

REGULATION
PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES

SECTION 1: STATEMENT OF PURPOSE

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

SECTION 2: AUTHORITY

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

Board: the Board of Health of the Town of Braintree.

Bar: an establishment whose business is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

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 said establishment.

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 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 Braintree.

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.

Indoor Sports Arena: any sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar recreational facilities where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Member 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:

- 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
- A corporation organized under chapter 180 of M.G.L.
- An established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or
- 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.

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

Person: any person, 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 building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Public Place: any building or facility owned, leased, operated or occupied by the municipality, including school buildings or grounds; municipal parks, beaches and/or recreational facilities; any area opened to the general public including, but not limited to, libraries, museums, theaters, auditoriums, indoor sports arenas and/or recreational facilities, inns, hotel and motel lobbies, educational facilities, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public, and licensed child-care locations.

Public Transportation: buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the town including indoor platforms by which such means of transportation may be accessed.

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 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 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.

Restaurant: any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and other eating establishment which gives or offers food for sale to the public, guests, or employees for on-premises consumption, to include all outdoor seating, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail Food Store: any establishment commonly known as a supermarket, grocery store, bakery, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption.

Retail Store: Any establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, any goods, wares, merchandise, articles or other things, including retail food stores. "Retail store" shall not include restaurants as defined herein.

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, except employees who are at least 18 years of age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Town of Braintree 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, including but not limited to herbal cigarettes or cigars, marijuana or other non-tobacco smoking products, 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".

Town: the Town of Braintree

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, as well as those places listed in subsection (c) below.
- (b) Smoking is hereby prohibited in the Town of Braintree 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) all municipally owned buildings including a 20 foot buffer zone from each building entrance;
 - (2) all municipally owned or leased vehicles or vessels;
 - (3) public places, which includes municipal parks, beaches and recreational facilities, and public transportation, except as otherwise provided in Section 5 of this regulation;
 - (4) restaurants and bars;
 - (5) retail tobacco stores;
 - (6) smoking bars.
- (d) The use of e-cigarettes and 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 is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.
- (e) The use of herbal cigarettes or cigars, marijuana or other non-tobacco smoking products is prohibited wherever smoking is prohibited per M.G.L. Ch 270, §22 and Section 4(c) of this regulation

SECTION 5: EXEMPTIONS

Notwithstanding the provisions of Section 4 of this regulation, smoking may be permitted in the following places and/or circumstances:

- (a) Private residences, except those portions used as a child care or health care office when operating as such.
- (b) A guest room in a hotel, motel, inn, bed and breakfast that is rented to a guest and designated as smoking rooms.

The rooms so designated as non-smoking shall be posted with signage indicating that smoking is prohibited therein. The number of rooms that are designated as smoking and the number designated as non-smoking must be submitted in writing to the Board of Health. No changes in room designation can take place without prior written approval of the Board of Health.
- (c) 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: open to the public; occupied by a non-member who is not an invited guest of a member or an employee of the association, or rented from the association for a fee or other agreement that compensates the association for the use of such space.
- (d) A nursing home, licensed pursuant to section 71 of M.G.L. chapter 111 and any acute care substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the Town of Braintree Board of Health having jurisdiction over the facility for designation of part of the facility as a residence.

- All applications shall designate the residential area of the facility. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees.
 - The entire facility may not be designated as a residence.
 - The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility.
 - All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.
 - The facility shall provide suitable documentation, acceptable to the Board of Health, that the facility is the permanent domicile of the residents residing in that portion of the facility, that information on the hazards of smoking and second hand smoke have been provided to all residences and that smoking cessation aids are available to all residents who use tobacco products.
 - The designated residential area shall be in conformance with the smoking restriction requirements of section 72X of M.G.L. chapter 111 and 105 CMR 150.015 (D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express approval of the Board of Health.
 - All areas of a nursing home not designated as a residence shall comply with this section.
 - The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to tobacco smoke.
 - Upon compliance with this section, submission of the required documentation and satisfactory inspection, the Board of Health shall certify the designated portion of the facility as a residence. The certification shall be valid for 1 year from the date of issuance. No fewer than 30 days before the expiration of the certification, the facility may apply for re-certification. If the Board of Health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time as the Board of Health notifies the nursing home of its certification status.
- (e) Outdoor areas of the municipal golf course, except within 20 feet of a nonsmoker.

SECTION 6: POSTING NOTICE OF PROHIBITION

Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises “No Smoking” signs provided by the Massachusetts Department of Public Health and available from the Braintree Board of Health or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Braintree Board of Health.

SECTION 7: 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) 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(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.
- (5) Violations of Sections 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.
- (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 any Board of Health-issued permit 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.

SECTION 8: 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 9: 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 10: EFFECTIVE DATE

This regulation shall be effective as of FEBRUARY 27, _____, 2015.


Philip Nedelman, M.D., Chairman


Paula Dowd, R.N., Vice-Chairman


Arthur Bregoli, M.D., Clerk