

## **Regulation of the Plymouth Board of Health Prohibiting Smoking in Workplaces and Other Places**

### **Section A: Statement of Purpose**

WHEREAS, secondhand tobacco smoke contains 7,000 chemicals, including hundreds of chemicals that are toxic and about 70 that cause cancer (e.g., formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic);<sup>1</sup>

WHEREAS, there is no risk-free level of exposure to secondhand smoke, and opening a window, sitting in a separate area, or using air filters or a fan does not get rid of secondhand smoke;<sup>2</sup>

WHEREAS, secondhand smoke causes coronary heart disease, stroke, and lung cancer in adults who do not smoke;<sup>3</sup>

WHEREAS, children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections such as pneumonia and bronchitis, middle ear disease, more frequent and severe asthma, respiratory symptoms, and slowed lung growth;<sup>4</sup>

WHEREAS, though they are not smokers themselves, an estimated 1,000 or more Massachusetts adults and children die each year from exposure to secondhand smoke;<sup>5</sup>

WHEREAS, exposure to secondhand aerosol from electronic cigarettes and other nicotine vape products is associated with increased bronchitis symptoms and shortness of breath<sup>6</sup> and asthma attacks,<sup>7</sup>

WHEREAS, the electronic cigarette aerosol that users breathe in and exhale can contain harmful and potentially harmful substances including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds; cancer-causing chemicals; and heavy metals such as nickel, tin and lead.<sup>8</sup>

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<sup>1</sup> U.S. Dep't of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>2</sup> U.S. Dep't of Health and Hum. Servs., *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (2006), <https://www.ncbi.nlm.nih.gov/books/NBK44324/>.

<sup>3</sup> See Note 1.

<sup>4</sup> Id.

<sup>5</sup> MA Tobacco Control and Cessation Prgm., *Tobacco Statistics in Massachusetts and How Tobacco Use Impacts Your Health*, accessed May 2023 at <https://www.mass.gov/info-details/tobacco-statistics-in-massachusetts-and-how-tobacco-use-impacts-your-health>.

<sup>6</sup> Islam et al., *Secondhand Nicotine Vaping at Home and Respiratory Symptoms in Young Adults*, 277 *Thorax* 663-68 (2022).

<sup>7</sup> Bayly et al., *Secondhand Exposure to Aerosols from Electronic Nicotine Delivery Systems and Asthma Exacerbations among Youth with Asthma*, 155(1) *Chest* 88–93 (2019).

<sup>8</sup> US Dep't of Health and Hum. Servs., *E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*, (2016), <https://www.cdc.gov/tobacco/sgr/e-cigarettes/index.htm>.

WHEREAS, exposure to secondhand smoke among nonsmokers is most prevalent among low socio-economic groups, those with MassHealth insurance, people with disabilities, and people who identify as LGBTQ:<sup>9</sup>

WHEREAS, an estimated 456,000 adult nonsmokers are exposed to secondhand smoke at home, work or other places for more than one hour per week;<sup>10</sup>

WHEREAS, secondhand smoke emitted from one area inside a building (including residential buildings) drifts under doors, through electrical outlets and pipe chases, through ventilation systems, and via hallways and stairways into other parts of the building;<sup>11</sup>

WHEREAS, “during 2012-2016, an estimated annual average of 18,100 reported home structure fires started by smoking materials killed an average of 590 people annually, injured 1,130 per year, and caused \$476 million in direct property damage per year;”<sup>12</sup>

WHEREAS, “tobacco products are the most littered item on the planet containing over 7000 toxic chemicals, which leech into our environment when discarded, and approximately 4.5 trillion cigarette filters pollute oceans, rivers, city sidewalks, parks, soil and beaches every year;” and<sup>13</sup>

WHEREAS, “cigarette filters contain microplastics and make up the second-highest form of plastic pollution worldwide.”<sup>14</sup>

WHEREAS, the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means.”<sup>15</sup>

Now, therefore it is the intention of the **Plymouth** Board of Health to regulate the sale of tobacco products.

## **Section B: Authority**

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<sup>9</sup> MA Tobacco Control and Cessation Prgm., *Non-Smoking Adults Exposed to Secondhand Smoke* (2015), <https://www.mass.gov/doc/massachusetts-adults-who-is-exposed-to-secondhand-smoke-factsheet-0/download>

<sup>10</sup> Id.

<sup>11</sup> Wilson et al., *Tobacco Smoke Exposure in Children Who Live in Multiunit Housing*, 127(1) *Pediatrics* 85-92 (2011).

<sup>12</sup> Nat'l Fire Protection Ass'n, *Home Fires Started by Smoking* (2019), <https://www.nfpa.org/News-and-Research/Data-research-and-tools/US-Fire-Problem/Smoking-Materials>.

<sup>13</sup> World Health Organization, *Tobacco: Poisoning Our Planet* (2022), <https://www.who.int/publications/i/item/9789240051287>.

<sup>14</sup> Id.

<sup>15</sup> Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).

This regulation is promulgated under the authority granted to the **Plymouth** 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 C: Definitions**

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

Adult-Only Retail Tobacco Store: an establishment that is not adjoined, that has a separate entrance not used by any other retailer, that does not sell food, beverages or alcohol, that does not have a lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, 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 from the Plymouth Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

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

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 municipality.

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. Any space that does not qualify as an outdoor space, as defined herein, shall be deemed to be enclosed.

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 noncombustible 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.

Municipality: The **TOWN** of Plymouth

Municipal athletic fields and courts: any athletic field or court owned, leased, rented, or operated by the municipality including, but not limited to, all walkways and parking areas used for such athletic field or court.

Municipal beach: any beach owned, leased, rented, or operated by the municipality including, but not limited to, all walkways and parking areas used for beaches.

Municipal building: any building owned, leased, rented, or operated by the municipality.

Municipal forests and wildlands: any forest, woods, marshland, field, nature trails or other similar outdoor area owned, leased, rented, or operated by the municipality.

Municipal parks, playgrounds, and pools: any park, playground, or pools, owned, leased, rented, or operated by the municipality including, but not limited to, all walkways and parking areas used for such parks, playgrounds, or pools.

Nursing home: an institution that serves as a residential facility for patients and is licensed pursuant to MGL Ch. 111, §71 and includes convalescent homes, rest homes, charitable homes for the aged, intermediate care facilities for persons with an intellectual disability and assisted living facilities.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering. This shall mean that the space has thorough, unobstructed circulation of outside air to all parts of the outdoor space, which shall be presumed to be present if: (a) the space has a ceiling and at least one half of the total surface area of the walls and other vertical boundaries of the space permits unobstructed flow of outside air into the space; or (b) the space has no ceiling and no more than two walls or other vertical boundaries of the space that obstruct the flow of air into the space exceed eight feet in height. A ceiling shall include any top or covering that is placed or may be placed over a space, or any other structure or arrangement above the space (including substantial coverage by umbrellas or awnings) that may impede the flow of air into the space, regardless of the type or nature of the materials or the partial or removable nature of the covering. Any outdoor space that has a structure capable of being enclosed, regardless of the

materials or removable nature of the walls or covers, shall be regarded as an enclosed space when the walls or covers are in place.

All outdoor spaces shall be physically separated from an enclosed workspace. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed workspace. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the workspace, the outdoor space shall be considered an extension of the enclosed workspace and subject to this section. Workspace or workspaces”, an enclosed area occupied by an employee during the course of his employment.

Smoking (or Smoke): the inhaling, exhaling, burning, or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco or nontobacco products 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 only; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person younger than 21 years old; (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 appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth in which the establishment is located; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. The term “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars,” “hookah bars” and “vape bars.”

Tobacco Product: a product containing or 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, 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; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” 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 the approved purpose.

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.

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 or 105 CMR 661, the definition contained in this regulation shall control.

**Section D: Smoking Prohibited**

1. Smoking is prohibited in the municipality in accordance with M.G.L. Ch. 270, §22 and 105 CMR 661 (commonly known as the “Smoke-Free Workplace Law”). It shall be the responsibility of both the employer and the property owner to prohibit smoking and provide a smoke-free environment for all employees working in an enclosed workplace in accordance with the Smoke-Free Workplace Law.
2. Smoking is prohibited in all enclosed common areas in residential multi-unit buildings including but not limited to hallways, stairwells, laundry rooms, elevators, foyers, common rooms. It shall be the responsibility of the landlord, condominium trustees, or other entity having control of such enclosed common areas to prohibit smoking in all such areas.
3. The use of Electronic Nicotine Delivery Systems is prohibited wherever smoking is prohibited in accordance with M.G.L. Ch. 270, §22 and under these regulations.
4. Smoking Bars are prohibited in the Municipality.
5. Smoking is prohibited in all Adult-Only Retail Tobacco Stores.
6. Smoking is prohibited in the following locations:
  - a. Anywhere outside within **30 feet** of any entrance or exit of a municipal building;
  - b. Municipal Parks, Playgrounds and Pools;
  - c. Municipal Athletic Fields and Courts;
  - d. Municipal Beaches;
  - e. Municipal Forests and Wildlands;
  - f. Municipal Campgrounds;
  - g. Nursing Homes;
  - h. 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;
  - i. Outdoor areas of restaurants, bars, taverns, and any other outdoor place where food or beverages are sold to the public and served to the public, or otherwise consumed or carried away by the public; and

- j. On public transportation, buses, taxis, and waiting/boarding areas for such transportation services.

### **SECTION 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. \$100 for the first violation;
  - b. \$200 for a second violation occurring within twenty-four (24) months of the date of the first violation; and
  - c. \$300 for a third or subsequent violation occurring within twenty-four (24) months 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. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in G.L. c. 40, §21D.
5. The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.
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 suspend or revoke any Board of Health-issued permit to operate and shall send notice of the suspension or revocation 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 F: SEVERABILITY**

If any paragraph or provision of this regulation is found to be invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

### **SECTION G: CONFLICT WITH OTHER LAWS OR REGULATIONS**

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 local, state, or federal law.

**SECTION H: EFFECTIVE DATE**

This regulation shall be effective as of September 1, 2023.

*Barry P. Stein*

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*David M. Golden, Jr.*

David M. Golden, Jr. (Aug 10, 2023 08:37 EDT)

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*Amy Donovan Palmer*

Amy Donovan-Palmer (Aug 10, 2023 15:56 EDT)

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*Lorenzo Pizarro*

Lorenzo Pizarro (Aug 16, 2023 11:44 EDT)

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