

TOWN OF UXBRIDGE
Board of Health
21 South Main Street
Uxbridge, MA 01569-1851
508-278-8600 x 8
boh@uxbridge-ma.gov

Received by
Uxbridge
Town Clerk

Article XXIV (proposed revisions Nov. 2018)

Regulation Prohibiting Smoking in Workplaces and Public Places
(formerly referred to as Environmental Tobacco Smoke (ETS) Regulations)

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 Uxbridge.

SECTION 2: Authority

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

Further, this regulation is specifically permitted by Massachusetts General Laws, Chapter 94C, Section 32L, specifically, Section 2 of "An Act Establishing A Sensible State Marihuana Policy," which provides, in part, "[N]othing contained herein shall prohibit a political subdivision of the Commonwealth from enacting ordinances or bylaws regulating or prohibiting the consumption of marihuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marihuana or tetrahydrocannabinol."

Further, this regulation is promulgated in order to augment the Town's Tobacco smoking regulation, as set forth in the Board of Health Article XVIII Regulation Restricting the Sale of Tobacco Products, effective April 1, 1995, as amended November 14, 2018. Nothing herein shall be construed in any way preempting any provision thereof.

Further, this regulation is promulgated to negate the potential deleterious effects of second-hand smoke as emanating from tobacco, marihuana, THC and synthetic cannabinoids upon others, by, without limitation, causing discomfort and illness to nonsmokers; interfering with others' right to breathe smoke-free air and aggravating allergies, and causing irritation to the eyes, nose, and throat, to both smoker and non-smoker exposed to secondhand smoke.

SECTION 3: Definitions

For the purpose of this regulation, the following words shall have the following meanings:

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, marijuana, or THC to the user, or relies on vaporization of any liquid or solid nicotine, marijuana or THC. 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 1 or more employees at 1 or more workplaces, at any 1 time, including the commonwealth or its agencies, authorities or political subdivisions.

Enclosed: 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.

Establishment: Any person, firm, corporation, establishment or agency within the Town of Uxbridge.

Food Service Establishment: any establishment holding a Food Service Permit within the Town of Uxbridge.

Health Care Facility: any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Marijuana Product: A psychoactive drug extracted from the plant *Cannabis sativa*, or more often, *Cannabis sativa* subsp. *indica*. The herbal form of the drug consists of dried mature flowers and subtending leaves of pistillate (female) plants. The resinous form, known as hashish, consists primarily of glandular trichomes collected from the same plant material. The major biologically active chemical compound in marijuana is delta-9-tetrahydrocannabinol, commonly referred to as THC.

Municipal Building: Any building or facility owned, operated, leased or occupied by the municipality.

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

Premises: includes the following: healthcare facilities, public places under the jurisdiction of the Uxbridge Board of Health, public transportation vehicles, retail stores, retail food stores, smoking bars, retail tobacco stores, membership associations also known as private clubs, food establishments licensed and/or permitted by the Board of Health of the Town of Uxbridge, or bar rooms licensed and/or permitted by the Board of Health and/or the Board of Selectmen of the Town of Uxbridge

Public Place: an enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: Food Service Establishments, auditoriums, licensed child care locations, public schools, private schools, summer camps, clinics, hospitals, Health Care Facilities, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, retail food stores, indoor sports arenas, public transit facilities, enclosed shopping malls, stairwells, hallways, entranceways, public restrooms, elevators accessible to the public, common areas in privately owned buildings, and any clubs, zooms or halls when open to the public or when used for public meetings. Public places shall also include all areas available to and customarily used by the general public in all business and non-profit entities patronized by the public, including but not limited to: offices, banks, laundromats, hair cutting establishments and salons, and hotels and motels.

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

Smoking or smoke: the lighting of a product designed to be combusted and inhaled (including but not limited to tobacco, marijuana, THC and synthetic cannabinoid) or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Synthetic cannabinoid: human-made mind-altering chemicals that are either sprayed on dried, shredded plant material so they can be smoked or sold as liquids to be vaporized and inhaled in e-cigarettes and other devices. These products are also known as herbal or liquid incense.

THC: a compound known as 49-tetrahydrocannabinol (delta-9-tetrahydrocannabinol).

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 and/or 105 CMR 661, the definitions contained in this regulation shall control.

SECTION 4: Smoking Prohibited

- a) It shall be the responsibility of the employer to provide an environment free of smoke free environment for all employees working in an enclosed workplace and those workplaces listed in subsection (c) below.
- b) Smoking is hereby prohibited in Uxbridge 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. Public Places
 - 2. Public Transportation Vehicles
 - 3. Municipal-owned and/or municipal-maintained parks, open spaces, trails, playgrounds, athletic fields and beaches
 - 4. the area within twenty-five (25) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty-five (25) foot area
 - 5. all outdoor spaces where food and/or beverages are served to the public by employees of restaurants, bars and taverns
- d) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4 of this regulation.

SECTION 5: Enforcement

- a) Any individual who smokes in an area in which smoking is prohibited under Section 4, shall be subject to a fine of fifty dollars (\$50.00) per offense.
- b) Any person having control of a premises upon which smoking is prohibited under the authority of this regulation, and who allows others to violate this regulation shall be subject to the following fines under Section 4. All penalties, as listed below, shall be applied to the holder of any permit, issued by the Town of Uxbridge where such permit exists, or to the person, firm, corporation, establishment or agency violating any regulation, where such a permit does not exist.
 - 1. \$100 for the first violation;
 - 2. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
 - 3. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- c) Each calendar day on which a violation occurs shall be considered a separate offense.
- d) This regulation shall be enforced by the Board of Health and its designees, and Uxbridge Police Department.
- e) Violations of Section 4 shall be disposed of by a civil penalty using the noncriminal 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.
- f) 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.

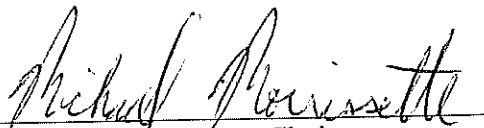
- g) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

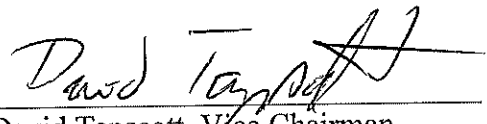
SECTION 7: Severability

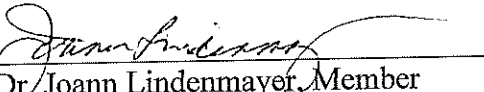
If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 8: Effective Date

This regulation shall take effect on December 31, 2018.


Michael Morrisette, Chairman


Dr. David Tapscott, Vice Chairman


Dr. Joann Lindenmayer, Member