



# Town of Ashland MASSACHUSETTS

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## Tobacco Regulations Prohibiting Smoking in Membership Associations, in the Enclosed areas of Retail Tobacco Stores and in Smoking Bars *Effective Date: January 1, 2010 / Revision for Title Name Change: December 11, 2012/ Electronic Cigarette in new Section 316-4.D, Effective Date: January 1, 2015*

### 316-1. Statement of Purpose:

WHEREAS, “There is 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, environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year (McGinnis JM, Foege W, 'Actual Causes of Death in the United States', JAMA 1993 270:2207-2212); 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). ;” The Board of Health recognizes the fundamental nature of the equal protection of public health for all under the law, including the right of those who wish to breathe smoke free air this regulation is established to protect and improve public health and welfare by prohibiting smoking in membership associations, retail tobacco stores and smoking bars. In order to preserve and protect the public health of the inhabitants of the Town of Ashland the Board of Health has determined the following regulations are necessary.

WHEREAS, it has been proven that the most widespread preventable disease is caused by the use of various tobacco products, including, but not limited to: cigarettes, cigars, pipe smoking,

WHEREAS, the Ashland Board of Health recognizes the fundamental nature of the equal protection of public health for all under the law, including the right of those who wish to breathe smoke free air

THEREFORE, the Board of Health of the Town of Ashland, Massachusetts recognizes the fundamental nature of the equal protection of public health for all under the law, including the right of those who wish to breathe smoke free air this regulation is established to protect and

improve public health and welfare by prohibiting smoking in membership associations, retail tobacco stores and smoking bars.

### 316-2. Authority

This regulation is promulgated under the authority granted to the Ashland Board of Health under Massachusetts General Laws Chapter 111, § Section 31 that 'boards of health may make reasonable health regulations.' It is also promulgated pursuant to Massachusetts General Laws Chapter 270, § Section 22(2) (j) which provides states in part that, "Nothing 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 ordinance or by-law or any fire, health or safety regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth." This Regulation is also promulgated under and Massachusetts General Laws Chapter 40, § Section 21D.

### 316-3. Definitions

For the purposes of this regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

**BOARD OF HEALTH or BOARD** - the Board of Health for the Town of Ashland, Massachusetts its agents and designees.

**BUSINESS AGENT** - An individual who has been designated by the owner or operator of any membership association to be the manager or otherwise in charge of said membership association.

**ENCLOSED** - A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including, but not limited to, an office, function room or hallway.

**MEMBERSHIP ASSOCIATION** - (also known as a private club): 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 one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one 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 purpose of this definition, unless individual membership containing not less than full membership costs and benefits 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. If the Outdoor Space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered Enclosed, when the walls or covers are in place. All Outdoor Spaces shall be physically separated from an Enclosed Work Space. 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 Work Space. 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 Work Space, the outdoor space shall be considered an extension of the Enclosed Work Space and subject to this section.

PERSON - Any individual, 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 Business Agents or designees of any of the foregoing.

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 Ashland 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 Laws Chapter 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 the 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 or her employment.

#### 316-4. Smoking Prohibited:

- A. Smoking is prohibited in the enclosed areas of Membership Associations, also known as private clubs.
- B. Smoking is prohibited in the enclosed areas of Retail Tobacco Stores and Smoking Bars.
- C. It shall be unlawful for any Person having control of the premises upon which Smoking is prohibited by this Regulation, or the Business Agent or designee of such Membership Association, Retail Tobacco Store or Smoking Bar, to permit a violation of this Regulation.
- D. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Chapter 270, Section 22 and by this Regulation.

### 316-5. Posting Notice of Prohibition

- A. Every Membership Association, Retail Tobacco Store or Smoking Bar in which Smoking is prohibited by and under the authority of this Regulation shall conspicuously display so that the signs are clearly visible to all employees, customers, and visitors while on the premises 'No smoking' signs provided by the Massachusetts Department of Public Health and available from the Ashland 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 Ashland Board of Health.
- B. It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed.

### 316-6. Violations:

It shall be the responsibility of the Membership Association, Retail Tobacco Store, Smoking Bar, Person having control of the premises, or its Business Agent to ensure compliance with all sections of this Regulation. Any Membership Association, Retail Tobacco Store, Smoking Bar, Person having control of the premises, or its Business Agent who violates any provision of this Regulation may be penalized by the by filing a criminal complaint at the appropriate venue, or at the Board's discretion, penalized by non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, § Section 21D, in which the violator shall be fined in accordance with Section 29-4 of the Town of Ashland By-law and may receive:

- A. First violation: a fine of one hundred dollars (\$100.00).
- B. Second violation within 24 months of the date of the first violation: a fine of two hundred dollars (\$200.00).
- C. Three or more violations within 24 months of the current violation, including the current violation: a fine of three hundred dollars (\$300.00).

### 316-7. Enforcement

- A. This Regulation shall be enforced by the Board of Health and its designees.
- B. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate an investigation.
- C. An individual, Person, entity or organization subject to the Smoking prohibitions of this section 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, entity or organization or to an enforcement authority. Notwithstanding the foregoing, a Person making a complaint or 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 Workplace or to the public.
- D. All Workplaces and other establishments subject to this Regulation are subject to periodic, unannounced inspections.

### 316-8. 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.

316-9. Conflict with Other Laws or Regulations:

Notwithstanding the provisions of the foregoing Section 316-4 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.

316-10. Effective Date

This regulation shall be effective on January 1, 2015.

Ashland Board of Health Members:

Mary Mortensen, Chairman Mary Mortensen

Charles Legassey, Vice Chairman Charles Legassey

Jon Fetherston, Clerk Jon Fetherston

Ed Hart, Member Edward P. Hart Jr.