

TOWN of NORTH ATTLEBOROUGH • BOARD of HEALTH
WORKPLACE AND PUBLIC PLACES SMOKING
REGULATION

Effective December 11, 2018

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ARTICLE I. PURPOSE and SCOPE:

The purpose of this regulation is to protect the health of employees and general public in the Town of North Attleborough.

ARTICLE II. AUTHORITY:

This regulation is promulgated under the authority granted to the North Attleborough 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 (M.G.L.) 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.”

ARTICLE III. DEFINITIONS:

The terms defined in M.G.L. c. 270, §22(a) are hereby incorporated into this regulation and the following terms shall have the following meanings for the purposes of this regulation, unless the context requires otherwise:

Board of Health or Board: The North Attleborough Board of Health and its authorized agents.

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

Definitions continued:

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 to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name such as so called “vape pens” or other vaporizing device.

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 North Attleborough.

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, stairwell, or hallway.

Marijuana: as defined in M.G.L., Chapter 94G, section 1.

Marijuana Accessories: equipment, products, devices or materials of any kind that are intended or designed for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited-to the items identified as “drug paraphernalia” in M.G.L., Chapter 94C, section 1 (12).

Massachusetts General Laws: M.G.L.

Nicotine Delivery Product: any device or material of any kind used to inhale nicotine. This term shall include, but not be limited to e-cigarettes, e-cigars, e-pipes, “vape pens” or other vaporizing device.

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

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 designee of the foregoing.

Public Place: an enclosed space that is open to and used by the general public, including but not limited to the following facilities: all those listed in M.G.L. c. 270, §22(b)(2) and (3), and licensed child care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, and lobbies accessible to the public; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels, motels, public restrooms; laundromats; hair salons; barbershops; retail stores; enclosed shopping malls; and any function rooms/halls for public meetings or public social functions.

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

Definitions continued:

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 which maintains a valid permit for the retail sale of tobacco products as required by the Town of North Attleborough Board of Health.

Smoke/Smoking: the lighting of a cigar, cigarette, pipe, “vape pen” or other tobacco product or having in one’s possession a lighted cigar, cigarette, pipe, Nicotine Delivery Product (such as “vape pen”) or Marijuana Accessory, or any other product, matter or substance that allows tobacco, nicotine or marijuana to be combusted and inhaled. The term smoking shall also include using or having in one’s possession an activated Nicotine Delivery Product or Marijuana Accessory.

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 Massachusetts General Law Chap. 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” or allows the on-site use of combustible marijuana products.

Town: The Town of North Attleborough and its authorized agents.

Vape pens/Vaporizing devices: “A battery-powered device shaped like a tube, consisting of a cartridge with a heating element that produces **vapor** from any of a variety of substances, especially liquid containing nicotine or cannabinoids or dried material from cannabis or other plants, allowing the user to inhale the aerosol **vapor**.” as defined by the Free Dictionary

<https://www.thefreedictionary.com/vaporizer+pen>

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

ARTICLE IV. 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 workplaces listed in subsection (c) below.
- b) Smoking is hereby prohibited in Town of North Attleborough 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), Town of North Attleboro Schools and Park and Recreation Department rules and regulations, smoking is also hereby prohibited in:
 - 1. The area within twenty-five (25) feet of any municipal building entranceway accessible to the public.

Smoking prohibited continued:

2. Municipal-owned parks and playgrounds.
 3. Municipal-owned athletic fields.
 4. Smoking bars and clubs.
- d) The use of e-cigarettes, e-cigars, e-pipes, and so called “vape pens” or other vaporizing devices are prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

ARTICLE V. ENFORCEMENT:

- a) An owner, manager, or other person in control of a building, vehicle or vessel who violates any provision of this regulation, shall be penalized by a noncriminal disposition process as provided in M.G.L. c.40, §21D. Any person who violates any provision of this regulation shall be subject to the following penalties:
1. Written warning for the First Offense;
 2. \$100 for a Second Offense occurring within two (2) years of the date of the first offense; and
 3. \$200 for a Third Offense occurring within two (2) years of the date of the first offense; and
 4. \$300 for a Fourth or subsequent Offense occurring within two (2) years of the second violation.
- b) Each calendar day on which a violation occurs shall be considered a separate offense.
- c) This Regulation shall be enforced by the Board of Health, any Town police officer, enforcement officers, and agents of the Town’s Board of Health.
- d) 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 M.G.L. without an enabling ordinance, or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- e) 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.
- 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 penalty imposed under this Regulation for the possession of Marijuana shall be in addition to any civil penalty that may be imposed pursuant to M.G.L., Chapter 94C, section 32L.

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

ARTICLE VI. SEVERABILITY:

If any paragraph or provision of this Regulation is found to be illegal, unenforceable, against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions and shall continue in full force and effect.

ARTICLE VII. CONFLICT WITH OTHER LAWS OR REGULATIONS:

Notwithstanding the provisions of Article 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.

ARTICLE VIII. EFFECTIVE DATE:

This Regulation shall take effect on December 10, 2018 following its adoption by the North Attleborough Board of Health at its regularly scheduled meeting of December 10, 2018.

By the North Attleborough Board of Health:

Jonathan D. Maslen, Chairman

Donald M. Bates, Member

John J. Donohue, Jr., Member