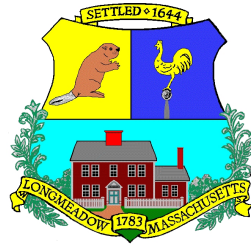


town of

# Longmeadow, Massachusetts

20 Williams Street 01106  
phone: 413-565-4140 fax: 413-565-4371



BEVERLY S. HIRSCHHORN, CHO, MPH  
Health Director  
Carol Steiner, R.N., M.S.,  
Community Health Nurse

**BOARD OF HEALTH**  
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## **REGULATIONS PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES**

### **SECTION 1 - PURPOSE**

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

### **SECTION 2 - AUTHORITY**

This regulation is promulgated under the authority granted to the Longmeadow Board of Health pursuant to Massachusetts General Laws (MGL) Chapter 111, Section 31 that "boards of health may make reasonable health regulations." It is also promulgated pursuant to MGL Chapter 270, Section 22(j) which 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 . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth." Finally, this local regulation is in conformance with the provisions of 105 CMR 661.000, the state regulations providing standards for implementation of MGL Chapter 270, Section 22.

### **SECTION 3 - 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 does not share space with another business, that has a separate entrance, that does not sell food or alcohol, that does not have any type of Longmeadow Board of Health food permit and whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia., The entrance into the Adult-Only Retail Store shall be secure; entrance into the establishment shall be restricted at all times to individuals 21 years of age and older. An Adult-Only Retail Tobacco Stores shall maintain a valid permit for the retail sale of tobacco products from the Town of Longmeadow Board of Health and, in addition, any applicable state licenses. All employees of Adult-Only Retail Tobacco Stores shall be 21 years of age or older. Smoking is prohibited in this workplace.

**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 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.

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 Longmeadow.

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.

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

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 Massachusetts General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. Entrance to smoking bars shall be limited to individuals age 21 or older. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco products: T: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, dissolved, inhaled, snorted or sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, blunt wraps, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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.

#### **SECTION 4: SMOKING PROHIBITED**

- a) Smoking is hereby prohibited in the Town of Longmeadow in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-Free Workplace Law”).
- b) In addition, under the expressed authority of M.G.L. Ch. 270, §22(j), the Longmeadow Board of Health hereby prohibits smoking in “Smoking Bars”
- c) The use of tobacco products as defined in this regulation is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(b) of this regulation.
- d) It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in any enclosed workplaces.

#### **SECTION 5: ENFORCEMENT**

- a) 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:
  - 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.
- 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 and its designees.
- d) The enforcement of penalties for violations of Section 4 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 and authorized by the Town of Longmeadow By-Laws.
- e) 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 105 CMR 661.00 or other regulation of the Mass. Dept. of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate within such building, vehicle, or vessel and shall send notice of the revocation or suspension to the Department of Public Health.
- f) 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 6: 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 7: 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 8: EFFECTIVE DATE**

Date of promulgation at Board of Health Meeting: December 17, 2019

Date of Publication (Legal Notice in the Longmeadow Reminder): December 26, 2019

Effective Date: December 26, 2019 (Publication Date)

Date of Notification of D.E.P. Central Registry of Local Regulations: December 31, 2019

**THE TOWN OF LONGMEADOW BOARD OF HEALTH**

Robert Rappaport, D.M.D., Chair

Robert Baevsky, M.D.

Barry Izenstein, M.D.

Richard Steingart, M.D.

Maripat Toye, R.N., M.S.