

**Chapter 6: Smoking in Workplaces, Public Places, and Membership Associations
Regulation of the Milton Board of Health
Prohibiting Smoking in Workplaces and Other Places**

Section A: Statement of Purpose

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

Section B: Authority

This regulation is promulgated under the authority granted to the Town of Milton 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 Stores (also known as a Retail Tobacco Store under 105 CMR 665.005): 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 younger than 21 years old is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth where the establishment is located.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of 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 Town of Milton.

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.

Food Establishment: as set forth in 105 CMR 590.000

Membership association: 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 1 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 Town of Milton whose real or personal property is exempt from taxation; or
- (iv) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 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 purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

Municipality: The Town of Milton.

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 building: Any building or facility owned, occupied, leased, rented, or operated by the municipality including the Milton Public Library.

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, assisted living facilities and hospice facilities.

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, restaurant, 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 nearly incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Milton Board of Health.

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 primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass General Law Chapter 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue

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.

Workspace(s): An enclosed area occupied by an employee during the course of his employment.

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: Smoking Bars are prohibited in the Town of Milton.
5. Adult-Only Retail Tobacco Stores: Adult-Only Retail Tobacco Stores are prohibited in the Town of Milton.
6. Smoking is prohibited in the following locations:
 - a. Smoking is hereby prohibited in the Town of Milton in accordance with M.G.L. c. 270, §22
 - b. Pursuant to M.G.L. c. 270, §22 (j) Smoking is also hereby prohibited in retail tobacco stores and smoking bars;
 - c. Anywhere outside within **15 feet** of any entrance or exit of a municipal building;
 - d. Pursuant to M.G.L. c. 270, §22 (j) smoking is also hereby prohibited in the enclosed areas of Membership Associations, also known as Private Clubs;
 - e. Nursing Homes;
 - f. Pursuant to M.G.L. c. 270, §22 (j) smoking is also hereby prohibited in all 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;
 - g. 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, to permit a violation of this regulation.
 - h. Municipal Building Tobacco Smoke Buffer Zone: Pursuant to M.G.L. c. 270, §22 (j) smoking is also hereby prohibited in the area within fifteen (15) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen-foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.

SECTION E: POSTING PROHIBITION

1. Every membership association in which smoking is prohibited by and under the authority of this regulation shall conspicuously display in the premises 'No Smoking' signs provided by the Massachusetts Department of Public Health and available from the Milton 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 Milton Board of Health.

SECTION F: 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. One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation.
5. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in M.G.L. c. 40, §21D.
6. 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.
7. If an owner, manager or other person in control of a building, establishment, 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.
8. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health.

SECTION G: SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

SECTION H: 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 I: EFFECTIVE DATE

This regulation shall be effective as of June 1, 2025.

Chair of the Board of Health *Roxanne F. Musto*

Secretary of the Board of Health *Laura L. Beland*

Member of the Board of Health