

## CHANGES HIGHLIGHTED IN YELLOW

### 8.0 SMOKING AND TOBACCO PRODUCTS

#### 8.1 Purpose and Authority and Related Provisions

The purpose of Section 8.0 of the Hopkinton Board of Health Regulations is to provide for the protection of public health, safety, and welfare of the general public by implementing strict and enforceable systems that prevent the illegal sale of tobacco, non-tobacco, electronic cigarette and non-tobacco nicotine delivery products to minors, limit the sale of tobacco, non-tobacco, electronic cigarette and non-tobacco nicotine delivery products to persons 21 years of age and older and to minimize exposure of Environmental Tobacco Smoke or Nicotine Vapor in public Places. Section 8.0 is promulgated pursuant to the authority of Massachusetts General Law (M.G.L.) chapter 111, section 31 that states that “Boards of Health may make reasonable health regulations.” This section shall be read and combined with Section 1 “Administrative” and Section 2 “Fee Schedule” regulations of the Hopkinton Board of Health; and the M.G.L. chapter, 270, section 6 and 22, “Selling or Giving Tobacco To Minors” & “Smoking in Public Places,” and 105 CMR 661.000 Regulations implementing M.G.L. chapter 270, section 22 is hereby adopted as a local regulation for the Town of Hopkinton.

#### 8.2 Definitions

8.2.1 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 said establishment.

8.2.2 E-Cigarette: Any electronic Nicotine Delivery Product 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, to simulate smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

8.2.3 Employee: Any individual who performs services for an employer.

8.2.4 Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Hopkinton or any agency thereof, which uses the services of one (1) or more employees.

8.2.5 Enclosed Area: A space between floor and ceiling which is enclosed on all sides by solid walls, exclusive of windows and doors, or other means which can effectively contain smoking by-products from entering or leaving this area.

8.2.6 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 hospitals, 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 including portions of a personal residence used for such purposes.

8.2.7 Liquid Nicotine (also known as “nicotine solution”): Any product composed either in whole, or in part, of nicotine and manufactured for use with Nicotine Delivery Products, including, but not limited to e-cigarettes.

8.2.8 Minor: Any individual who is under the age of twenty-one (21).

8.2.9 Municipal Building: A building owned, leased or rented by the Town of Hopkinton.

8.2.10 Non-Tobacco Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

8.2.11 Non-Smoking Area: An area in any of the facilities referenced in these regulations designated and posted by the proprietor or person in charge where smoking by patrons, employees, or others is prohibited and where smoke and smoking by-products are not permitted.

8.2.12 Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products directly to consumers.

8.2.13 Public Place: An enclosed indoor area that is used by or otherwise accessible by the general public.

8.2.14 Private Club: A non-profit organization per M.G.L. chapter 180 with a defined membership, which is not open to the public.

8.2.15 Self Service Display: Any device used to dispense any type of tobacco product to the consumer in a self-service manner.

8.2.16 Smoking: The lighting of any cigar, cigarette, electronic cigarette or non-tobacco nicotine delivery product, pipe or other tobacco or non-tobacco delivery product.

8.2.17 Tobacco Product: Includes, but is not limited to, cigarettes, cigars, electronic cigarettes, pipe tobacco, chewing tobacco, snuff, or tobacco in any of its forms.

8.2.18 Tobacco Vending Machine: Any machine or device designated or used for the vending of tobacco products by means of coins, bills, slugs, trade slips or swipe cards.

8.2.19 Workplace: An enclosed area where two (2) or more employees perform services for their employer including, but not limited to, conference rooms, elevators, employee lounges, entrances, hallways, restrooms and stairways.

### 8.3 Applicability of Permits

8.3.1 No facility, establishment or persons in the Town of Hopkinton may sell Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Products without first obtaining a permit from the Board of Health. An application on a form approved by the Hopkinton Board of Health shall be submitted and signed by the Operator and/or Owner of the facility.

8.3.1.1 The Applicant shall sign a statement on the application stating that s/he understands and will uphold the regulations. It shall be the responsibility of the licensee to instruct all employees on the sale and display of Tobacco, Electronic Cigarette and Non-Tobacco Nicotine Delivery Products to minors.

8.3.2 All Tobacco, Electronic Cigarette and Non-Tobacco Nicotine Delivery Product permits may be issued for a period not to exceed one year, and expire on June 30th.

8.3.3 The fee for all Tobacco, Electronic Cigarette and Non-Tobacco Nicotine Delivery Product sales permit shall be determined by the Hopkinton Board of Health annually.

8.3.4 A separate permit is required for each retail establishment selling Electronic Cigarettes and Non-Tobacco Nicotine Delivery Products.

8.3.5 Each Tobacco, Electronic Cigarette and Non-Tobacco Nicotine Delivery Product sales permit shall be displayed at the retail establishment in a conspicuous place.

## 8.4 Tobacco, Electronic Cigarette and Non-Tobacco Nicotine Delivery Product Sales Establishment Criteria

8.4.1 Posting of State Law. A copy of Massachusetts General Laws Chapter 270, Section 6 shall be posted in a conspicuous location by the owner or other person in charge of the place used to sell tobacco products at retail. Such notice shall be at least forty eight (48) square inches and shall be posted at the cash register that receives the greatest volume of single cigarette package sales. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or higher than six (6) feet from the floor. All other cash registers used for tobacco sales shall be posted with a notice no smaller than nine (9) square inches. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or more than six (6) feet from the floor.

8.4.2 The Hopkinton Tobacco Sales Permit must be displayed in clear and unobstructed view, no higher than six (6) feet and no lower than four (4) feet, behind the cash register receiving the highest volume of tobacco product sales.

## 8.5 Sale of Tobacco

8.5.1 The sale of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products to any person under the age of twenty-one (21) shall be prohibited in the Town of Hopkinton. Similarly, it shall be prohibited in the Town of Hopkinton that anyone not being his/her parent or guardian, gives a cigarette, chewing tobacco, snuff, electronic cigarette or non-tobacco nicotine delivery product to any person under the age of twenty-one (21).

8.5.1.1 No person or entity shall sell or permit cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products to an individual without requesting and examining photographic identification establishing the purchaser's age as twenty-one (21) years or older.

8.5.2 Self service displays of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products, from which individual packages or cartons may be selected by the customer, are prohibited in the Town of Hopkinton.

8.5.3 The sale of individual cigarettes, or components to electronic cigarettes or non-tobacco nicotine delivery products is prohibited in the Town of Hopkinton. Sale or distribution of tobacco, electronic cigarette or non-tobacco nicotine delivery products in any form other than an original factory-wrapped package is prohibited.

8.5.4 The free distribution or sampling of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products is prohibited in the Town of Hopkinton.

8.5.5 Vending machines or any other devices for the sale or distribution of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products are prohibited in the Town of Hopkinton.

8.5.6 All retail sales of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products must be face to face between the seller and the buyer.

8.5.7 No Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Product sales permit holder shall allow any employee to sell Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Products until each employee reads this regulation and any state laws regarding the sale of Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

8.5.8 A Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Product sales permit is non-transferable. A new owner of an establishment that sells Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Products must apply for a new Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Product sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

8.5.9 A Tobacco, Electronic Cigarette or Non-Tobacco Nicotine Delivery Product sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

#### 8.6 Inspections of Establishments that Sell Tobacco Products

8.6.1 The Board of Health shall enforce this regulation through periodic inspections of establishments conducted by the Board of Health or its enforcement officer(s) or designee(s). Inspections will be conducted a minimum of 2 times per year or more frequently at the discretion of the Board of Health.

8.6.2 Issuance of a Tobacco, Electronic Cigarette, and Non-Tobacco Nicotine Delivery Product sales permit shall be conditioned of an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

#### 8.7 Prohibition of Smoking in the Workplace

8.7.1 Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meals tax on the purchase; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in M.G.L. Chapter 112 Section 9C, group child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under M.G.L. Chapter 10 Section 38 of or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

8.7.2 It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

#### 8.8 Prohibition of Smoking in Public Places

8.8.1 Smoking or the use of any tobacco, electronic cigarette or non-tobacco nicotine delivery product is prohibited in all public places as defined in this regulation within the Town of Hopkinton except as otherwise provided under “Exceptions” in Section 8.9.

8.8.2 The owner, manager, or other person in charge of a public place shall be responsible for the following:

8.8.2.1 Conspicuous posting of “No Smoking” signs in order to clearly designate which buildings or areas are smoke free.

8.8.2.2 Removing smokers from areas where smoking is prohibited. Owners may use any appropriate and reasonable legal means to enforce this regulation.

#### 8.9 Exceptions from Public Places (Section 8.8)

8.9.1 Hotel and motel rooms that are rented to guests and are designated as smoking rooms and are conspicuously posted as such.

8.9.2 Private or semi-private rooms of nursing homes and long-term care facilities that are separately ventilated and are occupied by one or more patients who are all smokers and who have all requested in writing to be placed in a room where smoking is permitted.

8.9.3 Private clubs when only open to members. If non-member guests are permitted, the exception does not apply.

8.9.4 Other places identified in M.G.L. Chapter 270 Section 22.

## 8.10 Violations of Smoke and Tobacco Regulations

8.10.1 It shall be unlawful for any owner, manager, person in charge, agent, or designee of a public place as defined herein to permit any violation of this regulation, or fail to act within the timelines specified in a Board of Health Order to Correct.

## 8.11 Enforcement and Penalties

8.11.1 Sale of cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and non-tobacco nicotine delivery products to Minors

8.11.1.1 In the case of the first violation, the permittee shall be fined one hundred dollars (\$100)

8.11.1.2 In the case of the second violation within a twelve (12) month period, the permittee shall be fined two hundred dollars (\$200), and the permit shall be suspended for seven (7) consecutive days.

8.11.1.3 In the case of three or more violations within a twelve (12) month period, the permittee shall be fined three hundred dollars (\$300) and the permit shall be revoked.

8.11.1.3.1 The Board of Health shall provide written notice to the permittee of the intent to suspend or revoke a tobacco sales permit. The notice shall contain the reasons for the suspension or the revocation and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons in writing.

8.11.1.3.2 All cigars, cigarettes, chewing tobacco, snuff, electronic cigarettes and **non-tobacco nicotine delivery products** shall be removed from the premises upon suspension of the tobacco sales permit. Failure to remove shall constitute a separate violation of this section and shall be punishable by a fine of one hundred dollars (\$100) per business day.

8.11.2 Smoking in the Workplace and Public Places

8.11.2.1 The use of cigars, cigarettes, electronic cigarettes and **non-tobacco nicotine delivery products** is hereby prohibited in Hopkinton in locations and establishments covered by M.G.L. Ch. 270, Sec. 22 (commonly referred to as the “Smoke-Free Workplace Law) and in additional locations and establishments covered by any regulation or bylaw in Hopkinton.

8.11.2.2 In the case of the first violation within a twelve (12) month period, the owner, manager or person in charge shall be fined one hundred dollars (\$100)

8.11.2.3 In the case of the second violation within a twelve (12) month period, the the owner, manager or person in charge shall be fined two hundred dollars (\$200)

8.11.2.4 In the case of three or more violations within a twelve (12) month period, the owner, manager or person in charge shall be fined three hundred dollars (\$300) and the permit shall be revoked.

8.11.2.5 In the case of three or more violations within a twelve (12) month period, and where the public place also holds a Food Establishment license from the Town of Hopkinton Board of Health, in accordance with Massachusetts Department of Public Health Regulations for Minimum Standards for Food Establishments, 105 CMR 590.000, the owner, manager or person in charge shall be fined three hundred dollars (\$300) for each violation and the food establishment permit shall be revoked.

8.11.2.6 An individual or person who violates Section 8.11.2 by using a cigars, cigarettes, electronic cigarettes and **non-tobacco nicotine delivery products** in a place where smoking is prohibited shall be subject to a penalty of one hundred dollars (\$100). Violation 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.

8.11.3 At the discretion of the Board, violators may also be subject to additional enforcement under section 1.5 of these regulations.

8.11.4 This regulation shall be enforced by the Board of Health and its designees.

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

8.12 Non-Criminal Disposition:

8.12.1 Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue.

8.12.2 Each day any violation exists shall be deemed to be a separate offense.

#### 8.13 Enforcement:

8.13.1 Enforcement of this regulation shall be by the Board of Health of Hopkinton or its designated agent(s).

8.13.2 Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of Hopkinton or its designated agent(s) and the Board shall investigate.

#### 8.14 Other Applicable Laws

8.14.1 This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or other statutes. **In addition, please refer to the Town of Hopkinton General Bylaws Chapter 58 regarding the use or possession of tobacco by Minors in public outdoor places.**