

Chapter 220

SMOKING; SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS

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[HISTORY: Adopted by the Board of Health of the Town of Dover 4-25-1994; amended in its entirety 11-18-2013. Subsequent amendments noted where applicable.]

§ 220-1. Authority.

The Board of Health, pursuant to the authority granted under MGL c. 111, § 31, hereby adopts the following regulation to protect the public health of the community.

§ 220-2. Findings; purpose.

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac problems, allergies, and irritations to the eyes, nose and throat of both the smoker and nonsmoker exposed to secondhand smoke. Evidence further demonstrates that nicotine, present in tobacco, is extremely addictive. Almost 90% of all smokers begin smoking before the age 18 (the minimum legal age to be sold cigarettes in the Commonwealth), and every day an estimated additional 3,000 minors begin smoking in United States. There is an urgent health need to reduce easy access by youths to tobacco and nicotine products through strict enforcement of the state law prohibiting sales to minors, MGL c. 270, § 6, and additional measures. Therefore, these regulations are adopted pursuant to MGL c. 111, § 31, as reasonable health regulations designed to protect and improve the health of the residents of the Town of Dover.

§ 220-3. Definitions.

As used in this regulation:

BAR — An establishment whose business is devoted to the serving of alcoholic beverages for consumption by guests or customers on the premises and in which the service of food is only incidental to the consumption of such beverages.

BAR AREA OF A RESTAURANT — An area of a restaurant that is devoted to the serving of alcoholic beverages for consumption by guests or restaurant patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

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.

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 solid nicotine or any liquid. This term shall include such devices whether they are sold as e-cigarettes, e-cigars, e-pipes or under any other product name.

EMPLOYEE — Any individual who performs services for an employer in return for wages or profit and any person who volunteers his or her services for an employer.

EMPLOYER — Any individual, firm, partnership, association, corporation, trust, or other business entity or organization of any kind, including the Town of Dover or any agency thereof, which utilizes the services of one or more individual employees.

ENCLOSED — A space bound by walls continuous from the floor to the ceiling, enclosed by doors and under a roof.

HEALTH CARE FACILITY — Any office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions, including but not limited to 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.

INDOOR SPORTS ARENA — Any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

MUNICIPAL BUILDING — Any building or enclosed facility owned, operated, rented, leased or occupied by the Town of Dover, including school buildings and school grounds.

MUNICIPAL VEHICLE — Any vehicle owned, rented, leased, or operated by the Town of Dover, including, without limitation, cars, trucks, and buses.

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. Nicotine delivery products include, but are not limited to, e-cigarettes, lozenges or other candy, drinks, and inhalers.

NONSMOKING AREA — Any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.

PERSON — Any individual, firm, partnership, association, corporation, trust, or other business entity 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 or retail store, or the business agents or designees of any of the foregoing.

PRIVATE CLUB — A not-for-profit establishment created and organized pursuant to MGL c. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather is distinctly private.

PUBLIC PLACE — An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: restaurants, bar areas of restaurants, bars, auditoriums, licensed child care locations, educational facilities, clinics, hospitals, medical buildings, health care facilities, nursing

homes, long term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, retail food stores, indoor sports arenas, public transit facilities not owned by the Commonwealth of Massachusetts or United States government, enclosed shopping malls, stairwells, hallways, entrance ways, public rest rooms, elevators accessible to the public, common areas in privately owned buildings, and any clubs, rooms or halls when open to the public or when used for public meetings. A room or hall used for a private social function that is not open to the public and is under the control of the host or hostess rather than the proprietor or manager, such as a wedding reception, shall not be construed as a public place. Public places shall also include all areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys' offices and other offices, banks, laundromats, hair cutting establishments and salons, and hotels and motels. Areas of private residences shall not be considered public places except during those hours when operating as a public meeting place, a food service establishment, such as a residential kitchen permitted by the Board of Health, or as a business open to the public.

RESTAURANT — Any coffee shop, cafeteria, workplace cafeteria, sandwich stand, private and public school cafeteria, and other eating establishment which gives or offers food for sale to the public, guests, or employees for on-premises consumption. This includes all food service establishments licensed by the Board of Health, including catering facilities, but does not include private clubs or fraternal organizations when either is closed to the public.

RETAIL FOOD STORE — Any establishment whose primary activity is the sale of food items to the public for off-premises consumption, including, but not limited to, supermarket, grocery store, bakery, or convenience store. This includes any "take-out" food service establishment and all other food service establishments not included in the definition of a restaurant.

RETAIL STORE — Any retail service establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, any goods, wares, merchandise, articles, other things or services. "Retail store" shall include retail food stores but shall not include restaurants as defined herein.

SELF-SERVICE DISPLAY — Any display of tobacco products or nicotine delivery products from which individual, multi-packages, or cartons of such products may be selected by the customer without assistance from a clerk.

SMOKING — The inhaling, exhaling, burning, holding or carrying of any lighted cigar, cigarette, pipe, e-cigarette, or other lighted tobacco product or nicotine delivery product in any form.

TOBACCO PRODUCT — Any product containing tobacco in any of its forms, including, but not limited to, cigarettes, chewing tobacco, snuff, cigars, bidis, and pipe tobacco.

WORKPLACE — Any structure or portion thereof where one or more employees perform services for their employer. It also includes motor vehicles, employee lounges, rest rooms, conference rooms, hallways, stairways, and entrance ways. Areas of private residences shall not be considered workplaces except during those hours when operating as a public place, a food service establishment, such as a residential kitchen permitted by the Board of Health or as a business open to the public.

§ 220-4. Smoking in public places restricted; exceptions.

A. No person shall smoke nor shall any person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such person, permit a person to smoke in any public place as defined herein, except as otherwise provided in Subsection B of this section.

- (1) The prohibition on smoking in public places shall apply to all restaurants, bar areas of restaurants, and bars open to the public.

- (2) The prohibition on smoking shall apply at all times to all public places, including but not limited to auditoriums, schools and school property, clinics, hospitals, health care facilities, nursing homes, long term care facilities, public libraries, municipal buildings and enclosed facilities, municipal vehicles, museums, theaters, indoor sports arenas, enclosed shopping malls, hotel and motel lobbies.
 - (3) The prohibition on smoking in public places shall apply to buses, taxis, and other means of public mass transit while operating within the boundaries of the Town of Dover and indoor platforms.
 - (4) The prohibition on smoking in public places shall apply to retail stores doing business with the public.
 - (5) The prohibition on smoking in public places shall apply to lobbies, hallways, elevators, entrance ways, stairwells, rest rooms, and waiting areas and other common areas in multiple-unit residential and commercial facilities.
- B. Exclusions: Notwithstanding any other provision of these regulations, smoking may be permitted in the following places and/or under the following circumstances:
- (1) Private residences, except those areas used as a public place, a food service establishment, such as a residential kitchen permitted by the Board of Health, or as a business open to the public, including, but not limited to, a child care, adult care or health care facility during the hours when operating as such.
 - (2) Hotel and motel rooms rented to guests that are designated as rooms in which smoking is permitted and are posted as such.
 - (3) Retail tobacco stores which are primarily for the sale of tobacco products and paraphernalia, in which the sale of other products is merely incidental, which prohibit minors from entering the establishment and are not required to possess a retail food permit.
 - (4) Hotel and motel conference/meeting rooms and private enclosed assembly rooms while these places are being used for private social functions.
 - (5) Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle.

§ 220-5. Smoking in workplaces.

- A. Thirty days after the publication of a summary of this regulation, it shall be unlawful for any person to smoke in any workplace except in specifically designated enclosed and separately ventilated smoking areas as described in Subsection B. No place governed by this regulation shall be designated as a smoking area in its entirety. Nothing in this section shall be construed to require the creation of smoking areas.
- B. Each employer operating a workplace in the Town of Dover may specifically designate areas in which employees may smoke; provided, however, that comparable nonsmoking areas of sufficient size and capacity are available to accommodate the needs of all nonsmoking employees and further provided that smoking areas are in a separate room that is enclosed and separately ventilated. The construction of walls, floors, ceilings and doors shall be of such material that will prevent the permeation of tobacco smoke pollutants. All doors must be self-closing. Designated smoking areas may not be areas which employees are required to frequent during the course of employment. Employees shall not be

required to work in areas in which smoking is allowed under this regulation. Motor vehicles, hallways, elevators, entrance ways, stairwells, rest rooms and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.

- C. Each employer operating a workplace in the Town of Dover shall, within one month after publication of a summary of this regulation, establish and implement a written policy governing smoking in such workplace. Employees must be notified of the policy, and a copy of said policy must be posted in a location easily visible and accessible to all employees.
- D. Any employee exposed to smoke or smoking by-products who wishes to register a complaint for alleged violations of this regulation may file such complaint directly with the Board of Health.
- E. Each employer having control of premises upon which smoking is prohibited by this regulation, or his or her business agent or designee, shall conspicuously display upon the premises an appropriate number of signs sufficient to put employees and visitors on notice reading "Smoking Prohibited by Law," 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) in every area where smoking is prohibited by this regulation.
- F. It shall be unlawful for any person having control of any workplace upon which smoking is prohibited by this regulation to permit, or for his or her business agent to permit, a violation of this regulation.

§ 220-6. Retail sale of tobacco products.

- A. No person shall sell tobacco products or nicotine delivery products in the Town of Dover unless the sale of such products is controlled by an employee of the establishment. A person may only sell tobacco products or nicotine delivery products in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays of tobacco products or nicotine delivery products shall be prohibited.
- B. No person shall sell tobacco products or nicotine delivery products to any person under the age of 21 years or, not being his/her parent or guardian, give tobacco products or nicotine delivery products to any person under the age of 21.
- C. Retail establishments where tobacco products or nicotine delivery products are sold shall conspicuously post and reasonably maintain signs where these products are displayed and at all check-out counters notifying customers that proof of age is required to purchase tobacco products or nicotine delivery products.
- D. All clerks selling tobacco products or nicotine delivery products shall verify by means of government-issued photographic identification containing the bearer's date of birth that no person purchasing the tobacco or nicotine containing products is younger than 21 years of age. No such verification is required for any person over the age of 26. No clerk shall sell tobacco products or nicotine delivery products to a person under 21 years of age who has a note from an adult requesting such sale.
- E. No person selling tobacco products or nicotine delivery products shall allow an employee to sell or distribute such products until the employee has read the Board of Health regulations and state laws pertaining to the sale or distribution of tobacco products and nicotine delivery products and has signed a statement that the employee has read the regulations. Such form statement will be supplied by the Board of Health and kept on file at the establishment subject to review by the Board of Health.

- F. At any given time, there shall be no more than two Tobacco Product Sales Permits issued in the Town of Dover. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within 30 days of expiration will be treated as a first-time permit applicant. **[Added 7-10-2023]**
- G. As of July 29, 2023, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Dover Board of Health. It shall be up to the discretion of the Board of Health to determine if a relinquished permit can then be re-issued to a new applicant or business. **[Added 7-10-2023]**
- H. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within 60 days of such sale or acquisition for the permit held by the current permit holder if the applicant intends to sell tobacco products, as defined herein. If the permit transfer application is not received within this specified time frame, the permit will be deemed surrendered. **[Added 7-10-2023]**

§ 220-7. Cigarette packaging.

No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any single cigarette, or any package that contains fewer than 20 cigarettes.

§ 220-8. Reduced pricing; coupons.

No free or nominal cost samples of tobacco products or nicotine delivery products shall be distributed or sold within the Town of Dover. No tobacco sales permit holder, or his or her business agent or designee, shall redeem or honor any coupons or vouchers redeemable for tobacco, tobacco products or nicotine delivery products within the Town of Dover.

§ 220-9. Tobacco vending machines.

The sale of tobacco products or nicotine delivery products by means of vending machines is prohibited.

§ 220-10. Posting of state law required.

In conformance with MGL c. 270, § 7, a copy of MGL c. 270, § 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. Such notice shall be the notice provided by the Massachusetts Department of Public Health for this purpose.

Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of tobacco product sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. For all other cash registers that sell tobacco products, a notice shall be attached which is no smaller than nine square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or more than nine feet from the floor.

§ 220-11. Advertising of tobacco products on public transportation vehicles prohibited.

No person shall display an advertisement for tobacco products or nicotine delivery products on or in

any bus, taxicab licensed or garaged within the Town of Dover, or any other vehicle used for public transportation within the Town of Dover. Anyone violating this regulation shall be subject to a fine of not more than \$100 per day per vehicle. Each day or portion thereof during which a violation continues shall constitute a separate offense.

§ 220-12. Permits and fees.

Any person desiring to sell tobacco products or nicotine delivery products must obtain a permit to sell such products from the Board of Health within 30 days from the effective date of this regulation, or before commencing such sales, whichever is later. An application for a permit to sell tobacco products or nicotine delivery products must be made annually, and the application for a new or renewal permit must be made on a form provided by the Board of Health and must include an annual permit fee as established by the Board of Health for that year's permits. Annual permits expire on June 30, and applications for a permit renewal must be submitted 30 days prior to its expiration date. Prior to the issuance of the new or renewal permit, the person and an agent of the Board of Health must conduct an inspection of the sales facilities to determine compliance with all rules and regulations pertaining to the sale or distribution of tobacco products and nicotine delivery products. The Board of Health is authorized to deny the issuance or renewal of a permit if the sales facilities do not comply with this regulation. The Board is also authorized to revoke a permit for cause, after notice and a hearing, for failure to comply with this regulation. Decisions of the Board of Health may be appealed pursuant to MGL c. 249, § 4.

§ 220-13. Violations and penalties; enforcement.

- A. Any person who smokes in a nonsmoking area shall be subject to a fine of \$100 for each violation.
- B. Any person(s) in charge of a place covered by this regulation or his or her business agent or designee who fail(s) to comply with this regulation shall be subject to the following penalties:
 - (1) First offense; warning.
Second offense within three years of one previous offense: \$100.
Third offense within three years of two previous offenses: \$200.
Fourth or subsequent offense within three years of three previous offenses: \$300.
Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of this regulation and permit issued thereunder that is violated shall constitute a separate offense, and
 - (2) Suspension or revocation of the permit to sell tobacco products or nicotine delivery products issued by the Board of Health for that place for a period of time to be determined by the Board of Health.
- C. The Board of Health shall provide notice of the intent to suspend or revoke a tobacco product or nicotine delivery product sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. The Board of Health after a hearing may suspend or revoke the tobacco or nicotine containing product's sales permit. All tobacco products and nicotine delivery products shall be removed from the establishment during the effective date(s) of suspension or revocation of the sales permit. Failure to remove all tobacco products and nicotine

delivery products shall constitute a separate violation of this regulation.

- D. Any citizen who desires to register a complaint under this regulation may request, in writing, that the Board of Health initiate an investigation.
- E. In addition to the remedies provided by Subsections A and B, the Board of Health or any person aggrieved by the failure of a person covered by these regulations to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.
- F. Any person aggrieved by the failure or refusal to comply with restrictions in any municipal building or municipal vehicle may complain to the head of the department or agency occupying the area where the violation takes place. Said agency or department head shall respond in writing within 20 working days to the complainant that he/she has inspected the area described in this complaint and has enforced the provisions of this section as provided herein. In the event that the complaint is not satisfactorily resolved, the complainant may notify the Town Administrator and the Board of Health.
- G. Violations of this regulation and penalties listed in Subsections A and B may be subject to non-criminal disposition, MGL c. 40, § 21D, and Town of Dover General By-Laws Chapter 20, Article I, or by filing a criminal complaint at the appropriate venue.
- H. The Board of Health, its agents, officers, and employees shall have authority to enter upon privately and publicly owned property for the purpose of performing their duties under this regulation and may make or cause to be made such examinations or inspections as the Board deems necessary, subject to the constitutions and laws of the United States and the commonwealth.

§ 220-14. Effect on other regulations.

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

§ 220-15. Severability.

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

§ 220-16. Effective date; amendments.

This regulation shall take effect 30 days after publication of a summary of the regulation in a newspaper distributed in the Town of Dover. As required by MGL c. 111, § 31, an attested copy has been filed with DEP on June 8, 1994. This regulation was voted by a majority of this Board on April 25, 1994, amended on May 11, 1998, September 24, 2001, November 18, 2013, and July 10, 2023.