

§ 318-13 Findings and purpose.

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, and irritations to the eyes, nose, throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke (hereinafter "ETS"), which includes both exhaled smoke and the side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year (McGinnis JM, Foege W, "Actual Causes of Death in the United States," JAMA 1993 270:2207-2212); and whereas the United States Environmental Protection Agency classified secondhand smoke as a known human carcinogen and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); now, therefore, the Middleton Board of Health recognizes the right of those who wish to breathe smoke-free air and establishes these regulations to protect and improve the public health and welfare by prohibiting smoking in workplaces and public places.

§ 318-14 Authority

These regulations are promulgated under the authority granted to the Middleton Board of Health under MGL c. 111, § 31, which provides that "Boards 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."

§ 318-15 Definitions.

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

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.

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

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 to the user, or relies on vaporization. This term

shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes 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 Middleton

ENCLOSED

A space bounded by walls with or without windows or fenestrations, continuous from the floor to the ceiling and enclosed by one (1) or more doors, including but not limited to offices, rooms and halls.

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 designees of any of the foregoing.

RETAIL TOBACCO STORE

~~Any establishment whose primary purpose is to sell or offer for sale tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and neither possesses nor is required to possess a retail food permit.~~

An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Middleton Board of Health.

SMOKING

~~Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.~~ **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 Mass. General Law Ch. 270, Section 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”.

WORKPLACE

~~Any enclosed area of a structure or portion thereof at which one or more employees perform services for their employer.~~ 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; or 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. Chap. 270, Sect. 22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, Sect. 22 or 105 CMR 661, the definition contained in this regulation shall control.

§ 318-16 Smoking prohibited.

~~A. Smoking is prohibited in all workplaces and all public places.~~ **Smoking is hereby prohibited in the Town of Middleton in accordance with M.G.L. Ch. 270, Section 22 (commonly known as the “Smoke-Free Workplace Law”).**

~~B. Bars. Smoking shall be prohibited in all bars after the effective date of these regulations.~~

B. Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is also hereby prohibited in the following locations:

- a) a retail tobacco store, except that smoking will be permitted in this establishment if it is housed in a freestanding building that is not occupied by any other business, residence or workplace.
- b) smoking bar
- c) any guest room in a hotel, motel, or inn

- d) seating areas of outdoor spaces of restaurants, bars, and other businesses holding a food permit

C. The use of e-cigarettes is prohibited wherever smoking is prohibited by Massachusetts state law, including, but not limited to General Laws Chapter 270, Section 22 and by these regulations.

§ 318-17 Posting notice.

Every person having control of premises upon which smoking is prohibited by and under the authority of these regulations shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Middleton 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 Middleton Board of Health.

§ 318-18 Exceptions.

~~Notwithstanding the provisions of § **318-16** of these regulations, smoking may be permitted in the following places and/or circumstances:~~

- ~~A. Private residences, except those portions used as a child care or health care office when operating as such.~~
- ~~B. Hotel and motel rooms rented to guests that are designated as smoking rooms, provided that at least 100% of the rooms shall be smoke free at all times. A room so designated shall have signs posted indicating that smoking is prohibited therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the Middleton Board of Health.~~
- ~~C. Smoking by residents and patients of nursing homes and long-term care facilities may be permitted in one separately enclosed designated smoking room, provided that the air in the designated smoking room does not interfere with the smoke-free air in the remainder of the facility.~~
- ~~D. Retail tobacco stores, provided that such establishments prohibit entry to persons under the age of 21 at all times and that such establishments conspicuously post signs at all entrances which warn patrons of the dangers of environmental tobacco smoke.~~
- ~~E. Open air outdoor or sidewalk seating, provided that:
 - ~~(1) Said area is not artificially heated or cooled;~~
 - ~~(2) Said area is not enclosed, except for one side which may adjoin the building; and~~
 - ~~(3) The outdoor space and the indoor space are, where they adjoin, separated by a solid wall and self-closing doors such that smoke cannot enter the indoor space.~~~~

§ 318-18_Violations and penalties.

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 as follows:

- A. In the case of a first violation, a fine of \$100.
- B. In the case of a second violation within 24 months of the date of the first violation, a fine of \$200.
- C. In the case of three or more violations within 24 months of the current violation, including the current violation, a fine of \$300.

§ 318-19_Enforcement.

- A. These regulations shall be enforced by the Board of Health and its designees.
- B. One method of enforcement may be periodic, unannounced inspections of those establishments subject to these regulations. Any citizen who desires to register a complaint under these regulations may request that the Board of Health initiate an investigation.
- C. **The disposition of fines assessed shall be subject to MGL Chapter 111, Section 188.**
- D. 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 Middleton 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.

§ 318-20_Noncriminal disposition.

Whoever violates any provision of these regulations, the violation of which is subject to a specific penalty, may be penalized by the noncriminal method of disposition as provided in MGL c. 40, § 21D without an enabling ordinance or by-law ~~or by filing a criminal complaint at the appropriate venue. Noncriminal disposition authority can be found in the Town of Middleton Bylaws in Chapter 1, General Provisions, Article I, Enforcement.~~

- A. Each day on which any violation exists shall be deemed to be a separate offense.
- B. ~~Penalty: \$100 for the first offense; \$200 for the second offense within 24 months of the date of the first violation; \$300 for the third or subsequent offense within 24 months of the date of the current violation.~~
- C. Enforcing persons: Middleton Board of Health.

§ 318-21_Severability.

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

§ 318-22_Conflict with other laws or regulations.

Notwithstanding the provisions of the foregoing, § **318-16** nothing in this regulation shall not 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.

§ 318-23_Effective date.

These regulations shall take effect on _____.

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