

**Boston Public Health Commission Regulation  
Clean Air Works Workplace Smoking and E-Cigarette Use Restrictions**

**(As Amended on December 1, 2011)**

**WHEREAS**, Environmental Tobacco Smoke is a leading public health problem in the City of Boston and throughout the United States;

**WHEREAS**, there exists conclusive evidence that Environmental Tobacco Smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose, and throat of both smokers and nonsmokers;

**WHEREAS**, second-hand smoke presents a clear threat to the health of the citizens of the Boston;

**WHEREAS**, workplaces are locations where the citizens of Boston are exposed to significant levels of Environmental Tobacco Smoke;

**WHEREAS**, the Regulation, "Clean Air Works Workplace Smoking Restrictions," first enacted by this Board on December 11, 2002, restricted smoking in an enclosed workplace in the City of Boston;

**WHEREAS**, the Regulation has successfully lessened the exposure to second hand smoke by workers in Boston; the Surgeon General reports that workplace smoking restrictions are associated with increases in attempts to stop smoking and increases in successful smoking cessation rates as well as decreases in smoking rates across age groups, including youth;

**WHEREAS**, e-cigarettes and their use in the workplace seriously compromise current laws and regulations governing indoor smoking bans and have the potential to undermine the positive health and behavioral impacts associated therewith;

**WHEREAS**, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin;

**WHEREAS**, the U.S. Food and Drug Administration has conducted laboratory tests that found e-cigarettes contain toxic chemicals and carcinogens; and the health effects of involuntary exposure to e-cigarette vapors containing these chemicals and carcinogens is unknown; and

**THEREFORE**, the Boston Public Health Commission recognizes the right of those who wish to work and breathe in a smoke-free environment and adopts the following amendments to the Clean Air Works Workplace Smoking Restrictions.

## Section I. Definitions and Guidelines

### 1. Definitions

a. **Adjacent**- Contiguous or adjoining.

b. **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.

c. **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. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

d. **Employee** – Any individual who performs services for an employer in return for wages or profit.

e. **Employer** - Any individual, partnership, association, corporation, trust, school, college, university or other educational institution or other organization, including any public or private authority or municipal or other governmental agency, which regularly uses the services of one (1) or more employees.

f. **Enclosed** - A space bounded by walls (with or without windows) continuous from floor to ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

g. **Executive Director** – The executive officer of the Boston Public Health Commission.

h. **Retail Tobacco Store** – Any 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 under the age of eighteen (18) is prohibited at all times.

i. **Smoking** – Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

j. **Smoking bar** – An establishment whose business is primarily devoted to the serving of tobacco products for consumption by guests on the premises and in which the serving of food or alcohol is only incidental to the consumption of such tobacco products and

prohibits the entry of persons under the age of eighteen (18) at all times. The establishment must annually demonstrate that revenue generated from the serving of tobacco products must be equal to or greater than sixty percent (60%) of the total combined revenue generated by the service of such tobacco products, beverages and food. Revenue figures to be considered as evidence for the purpose of this regulation shall be those used in calculating the meal tax amount filed on Massachusetts Department of Revenue Form MAB-4, Line 1 for the preceding four filings and those used in calculating the cigar and smoking tobacco excise tax amount filed on Massachusetts Department of Revenue Form Cigar-1 for the preceding four filings.

k. **Workplace** – Any enclosed indoor and adjacent outdoor area, structure or facility or any portion thereof at which one (1) or more employee(s) perform services for their employer, including but not limited to: retail food stores; retail stores; restaurants; bars; cafes; and bowling alleys.

l. **Work space or Work Spaces** – any enclosed indoor and adjacent outdoor area, structure or facility occupied by an employee during the course of his or her employment, including but not limited to: offices; customer service areas; common areas; patios/porches; decks; yards; loading docks; hallways; waiting areas; restrooms; lounges; and eating areas.

## 2. Guidelines

The Executive Director of the Boston Public Health Commission may issue guidelines for the implementation of this regulation, including but not limited to definitions of terms as used in this regulation and in the guidelines. In the event of a conflict between this regulation and the guidelines, as either may be amended, the regulation shall control. The Boston Public Health Commission reserves the right to review and amend this regulation at any time in order to protect, promote and preserve the public health of the City of Boston and its residents.

## **Section II. Prohibition of Smoking in The Workplace**

1. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in a workplace. Each employer shall adopt, distribute and implement, a written policy prohibiting smoking in the workplace in accordance with this regulation.

2. Smoking shall be prohibited in the workplace. This includes all work spaces, common work areas, auditoriums, classrooms, conference and meeting rooms, private

offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, patios, decks, yards and loading docks.

3. The written smoking policy shall be adopted and distributed to all employees within four (4) weeks of the effective date of this regulation or within four (4) weeks of the commencement of business operations. A copy of the policy shall be conspicuously posted in all facilities or areas of the workplace.

4. The employer shall post in a clear and conspicuous manner in the workplace signs stating that smoking is prohibited.

### **Section III. Exceptions**

Notwithstanding the provisions of Section II of this regulation, smoking may be permitted in the following places and/or circumstances:

- a. Private residences;
- b. Retail tobacco stores, as defined in Section I, which are primarily for the sale of tobacco products and paraphernalia, in which the sale of other products is merely incidental, prohibit the entry of persons under the age of eighteen (18) at all times, maintain a valid permit for the sale of tobacco products issued by the Tobacco Control Program of the Boston Public Health Commission and are not required to possess a retail food permit;
- c. Performers upon a stage, provided that the smoking is part of a theatrical production; and
- d. Religious ceremonies where smoking is part of the ritual.

### **Section IV. Prohibition of E-Cigarette Use in the Workplace**

The use of an e-cigarette is prohibited in a workplace. This includes all work spaces, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, patios, decks, yards, and loading docks.

### **Section V. Smoking Bars**

1. The operation of a Smoking Bar is prohibited in the City of Boston. Notwithstanding anything to the contrary, a Smoking Bar whose permit is current or an establishment whose application is pending before the Tobacco Control Program of the Boston Public Health Commission as of November 1, 2008 shall be allowed to operate for an initial period of not more than ten (10) years from the date of passage of this amendment

provided it is in compliance with all terms and conditions of this regulation. Compliance with the terms and conditions of this regulation shall include, but shall not be limited to, prohibiting the entry of persons under the age of eighteen (18) at all times, maintaining a valid permit for the sale of tobacco products issued by the Tobacco Control Program of the Boston Public Health Commission and conspicuously posting signs warning patrons of the dangers of environmental smoke in the manner and form specified by the Executive Director at all entrances and on all menus. Any permit for the operation of a Smoking Bar pursuant to this section shall not be transferable and if revoked or terminated for any reason, shall not be reinstated. All Smoking Bars operating under this section shall be assessed an annual operation fee and an annual permit fee as determined by the Executive Director.

2. Upon expiration of the initial ten (10) year period referenced in Paragraph 1 above, a Smoking Bar may petition the Boston Public Health Commission to operate for up to an additional ten (10) year period. Such petition shall be subject to review and approval by the Executive Director in accordance with prevailing data, evidence and research on environmental tobacco smoke and its threat to public health and safety.

### **Section VI. Violations**

1. It shall be the responsibility of the employer, business agent, manager or other person having control of such workplace to ensure compliance with all sections of this regulation pertaining to his/her place of business or any person in violation of any section of this regulation. A violator of this regulation may receive:

a. In the case of a first violation a fine of two hundred dollars (\$200.00);

b. In the case of a second violation, within 24 months of the first violation, a fine of seven hundred dollars (\$700.00); and,

c. In the case of three or more violations within 24 months of the second or current violation, a fine of one thousand dollars (\$1000.00) for each violation.

2. Each calendar day an employer, person, business or entity operates in violation of any provision of this regulation shall be deemed a separate violation.

3. No provision, clause or sentence of this section of this Regulation shall be interpreted as prohibiting the Boston Public Health Commission, a City of Boston Department or Agency from suspending, or revoking any license or permit issued by and within the jurisdiction of such Department or Agency for repeated violations of this Regulation.

## **Section VII. Enforcement**

1. Authority to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or designees; the City of Boston Inspectional Services Department; City of Boston Police Department; and the City of Boston Fire Department.
2. Any violation of this regulation may be enforced in the manner provided in M.G.L. c.111 §187, by the Boston Public Health Commission, its subsidiary programs or designees.
3. Any person may register a complaint under this regulation to initiate an investigation and enforcement with the Boston Public Health Commission Tobacco Control Program.
4. Any fines or fees collected under this regulation shall be used for the enforcement of these regulations and/or for educational programs on the harmful effects of tobacco.

## **Section VIII. Non-retaliation**

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

## **Section IX. Conflict with Other Laws, Ordinances Or Regulations**

1. Nothing in this regulation shall be deemed to amend or repeal any applicable fire, health or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such fire, health or other law, ordinance or regulation.
2. Nothing in this regulation shall be deemed to preempt the further limitation of smoking in the City of Boston by any local regulatory body within the limits of its authority and jurisdiction.

## **Section X. Waivers**

1. Any employer, owner, manager or other person having control of a workplace subject to this regulation may apply to the Executive Director of the Boston Public Health Commission for a waiver of any provision of this regulation for a period not to exceed ninety (90) days.

2. All waivers shall be submitted to the Executive Director, or his designee, on an application form provided by the Boston Public Health Commission along with a \$100 non-refundable filing fee.

3. The decision to grant such a waiver shall be in the sole discretion of the Executive Director, based upon his determination that such waiver is in the public interest. In so determining, the Executive Director may take into account, but is not limited to, the following:

- a. The efforts that the employer, owner, manager or other person having control of a workplace has made toward compliance with the regulation;
- b. Whether or not the workplace will be in compliance with all terms of the regulation within ninety (90) days; and,
- c. Whether or not the granting of the waiver will result in an appreciable danger to the health of the public.

4. No employer, owner, manager or other person having control of a workplace shall be granted more than one waiver.

#### **Section XI. Severability**

If any provision, clause, sentence, paragraph or word of this Regulation or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Regulation which can be given effect without the invalid provisions or application and to this end the provisions of this Regulation are declared severable.

#### **Section XII. Effective Date**

This amendment shall take effect upon passage.