Pittsfield Board of Health

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Environmental Tobacco Smoke Regulations
Effective Date: September 15, 2014

These regulations replace any and all prior Environmental Tobacco Smoke Tobacco Regulations.

A. Statement of Purpose:

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and 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 (U.S. EPA, 2003) 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 Pittsfield Board of Health recognize the rights of those who wish to breathe smoke-free air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in workplaces, and other specified areas.

B. This regulation is promulgated under the authority granted to the Pittsfield Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 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 “nothing 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.”

C. Definitions: For the purposes of this regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

Bar: An adult-only establishment whose business is devoted to the serving of alcoholic beverages for consumption by guests 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 of operator of any establishment to be the manager or otherwise in charge of said establishment.
Board: The Boards of Health of the City of Pittsfield.

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

City: The City of Pittsfield.

City Owned Parks, Playgrounds and Conservation Areas: An area of land within the City of Pittsfield that is used for the enjoyment of the public, having facilities for rest and recreation, often owned, set apart, and managed by the City of Pittsfield. For a current list of city owned and operated parks, playgrounds and conservation areas, please visit http://www.cityofpittsfield.org/pittsfield/city_hall/community_development/parks_and_recreation/uploads/Parks_Brochure.pdf

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 of liquid nicotine to the user, or relies on vaporization of any liquid, or solid nicotine. 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, within the City of Pittsfield.

Enclosed Space: 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 limiting to an office, function room or hallway.

Outdoor Seating: Any outside area of an establishment that is under the control or management of said establishment.

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 of designees of any of the foregoing.

Private Club: A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a “club license” or a “war veteran’s club license” as defined in M.G.L. Ch. 138,
12 and by the Massachusetts Alcoholic Beverages Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Public place: Any building, facility or vehicle owned, leased, operated or occupied by the municipality, retail stores, retail food stores, supermarkets, restaurants, any type of outdoor seating where employees offer food or drink, or alcoholic beverages outdoor eating establishments where food and alcoholic beverages are served by an employee, bars, libraries, museums, theaters, banks, Laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outside platforms, open meetings of a governmental body as defined in section 11A of chapter 30, section 23A of chapter 39 and section 9F of chapter 34, and licensed child-care locations.

Retail Food Store: Any establishment commonly known as a supermarket, grocery store, bakery or convenience store, or any other establishment in which the primary activity is the sale of food items to the public for off-premises consumption.

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 merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sales of tobacco products as required to be issued by the City of Pittsfield Board of Health.

Smoking (or smoke): 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 or inhaled.

Smoking Bar: an establishment that primarily is engaged in the retail sales of tobacco and nicotine delivery products for consumption by customers on the premises and is required by Massachusetts General Law Chapter 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. Smoking Bar shall include, but not limited to, those establishments that are commonly known as cigar bars, and hookah bars.

Tobacco Product: Any product containing, 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, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.
Workplace: Any enclosed area of a structure or portion thereof at which one (1) 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.

D. Smoking Prohibited:

1. It is the responsibility of the employer to provide a smoke free environment for all employees working in enclosed spaces and to meet compliance with these regulations.

2. Pursuant to M.G.L. Chapter 270, § 22(j), smoking is also hereby prohibited in private clubs, public places, outdoor seating, workplaces, enclosed spaces, retail tobacco stores, smoking bars, and bars, and all City owned and operated parks, playgrounds and conservation areas.

3. The use of e-cigarettes or other electronic nicotine delivery devices is prohibited wherever smoking is prohibited per M.G.L. Chap 270 § 22 and section D of this regulation.

4. Within ten (10) feet of the main entrance to a building open to the public.

5. It shall be unlawful for any employer or other person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such person, to permit a violation of this regulation.

E. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises “No Smoking” signs provided by the Massachusetts Department of Public Health and available from the City of Pittsfield 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 City of Pittsfield Board of Health.

F. Exceptions:

Notwithstanding the provisions of Paragraph D of this regulation, smoking may be permitted in the following places and/or circumstances:
1. Private residences except those portions used as a childcare or health care office when operation as such.

2. Hotel and motel rooms rented to guest that are designated as “smoking rooms”, provided that at least 80% of the rooms be smoke-free at all times. A room so assigned shall have signs posted indicating that smoking is allowed therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the appropriate Board of Health.

3. Private or semi-private rooms of nursing homes and long term care facilities, which are separately ventilated, occupied by one (1) or more patients, and all of whom are smokers who have requested in writing to be placed in rooms where smoking is permitted AND only allowed by meeting compliance with this regulation.

G. Violations:

Any employer, employee, and/or his or her business agent, or public park patron who violates any provision of this regulation, shall receive:

1. In the case of a first violation, a fine of one hundred dollars ($100.00).

2. In the case of a second violation within a 24 months of the date of the first violation, a fine of two hundred dollars ($200.00).

3. In the case of three or more violations within 24 months of the current violation, including the current violation, a fine of three hundred dollars ($300.00).

4. In case of a food service establishment or any other permit holder in which the Board of Health has jurisdiction, may revoke permits to operate in accordance with this regulation upon determination that permit holder has committed a violation of this regulation. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board’s decision and the reasons therefore, in writing.

5. Each day on which any violation exists shall be deemed to be a separate offense.

H. Enforcement:

1. Violations of section G (1-4) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in section 21D of Chapter 40 of the Massachusetts General Laws or by filing a criminal complaint with the appropriate venue.

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

3. This regulation of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation. Any citizen who desires to
register a complaint under this regulation may request that the appropriate Board of Health initiate an investigation.

I. Severability:

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

J. Conflict with Other Laws or Regulations:

Notwithstanding the provisions of the foregoing Paragraph D of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations.

K. Effective Date: September 15, 2014

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Date of Published Notice of Public Hearing: July 9, 2014

City Clerk Attested Date:

Date of Summary Regulations in Public Newspaper: