



**CITY OF PEABODY
DEPARTMENT OF HUMAN SERVICES
24 Lowell Street
Peabody, Massachusetts 01960
(978) 538-5926
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**BOARD OF HEALTH
BERNARD H. HOROWITZ, CHAIRMAN
STEPHEN S. KALIVAS, R.Ph.
LEIGH ANN MANSBERGER, MD, MPH**

**SHARON CAMERON
DIRECTOR**

**FOR PUBLIC HEARING 10/14
City of Peabody Board of Health Regulations**

Part I. Environmental Smoke 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 whereas the harmful effects of 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 year¹ and whereas in 2000, the Public Health Service's National Toxicology Program listed environmental tobacco smoke as a known human carcinogen²; and whereas the American Heart Association has found that secondhand exposure to e-cigarette aerosol exposes a nonsmoker to nicotine, particulates, and several potentially toxic organic chemicals³; now, therefore, the Board of Health of the City of Peabody recognizes the right 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 public places.

B. Authority: This regulation is promulgated under the authority granted to the Peabody Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "boards of health may make reasonable health regulations."

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. Revenue generated from the serving of alcoholic beverages must be equal to or greater than eighty percent (80%) of the total combined revenue generated by the service of such beverages and food. Revenue figures to be considered as evidence for the purpose of this regulation are those used in calculating the meal tax amount required to be filed with the Massachusetts Department of Revenue for the preceding year.

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.

Board: The Board of Health of the City of Peabody.

City: The City of Peabody.

¹ McGinnis JM, Foege W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212

² U.S. DHHS, 2000, citing Cal. EPA, 1997)

³ Bhatnagar A, "Electronic Cigarettes: A Policy Statement From the American Heart Association", Circulation 2014; 130:00-00.



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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-cigs, e-pipes or under any other product name.

Employee: Any person who performs services for an employer.

Employer: A person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Peabody or any agency thereof, which utilizes the services of one (1) or more employees.

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

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.

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 veterans club license" as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Bar Area of a Private Club: An area of a private club that is devoted to the serving of alcoholic beverages for consumption by members on the premises and in which the serving of food is only incidental to the consumption of such beverage.

Public place: Any building, facility, land, or vehicle owned, leased, operated or occupied by the municipality, including school buildings or grounds; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, libraries, museums, theaters, banks, parks, 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 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 Store: Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other things.



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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.

Smoking: 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.

Sports Arena: means sports pavilions, gymnasiums, health spas, boxing arenas, billiard parlors, public and semi-public swimming pools, skating rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in or witness sports events.

Workplace: an indoor area, structure or facility or a portion thereof, at which 1 or more employees perform a service for compensation for the 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. Smoking is hereby prohibited in Peabody in accordance with M.G.L. Ch. 270 s22 (commonly known as the "Smoke-free Workplace Law.")
2. Smoking is prohibited in all workplaces and all public places.
3. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, section 22, and Section D. of this regulation.
4. 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.
5. Retail Stores and Malls shall be smoke free at all times.
6. Waiting rooms, hallways, wards and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices shall be smoke free at all times.
7. All areas available to and customarily used by the general public, including but not limited to meeting rooms, hallways, stairways, elevators, and restrooms, in all businesses and non-profit entities, including but not limited to, attorneys' offices and other offices, banks, Laundromats, haircutting establishments, theaters, hotels and motels shall be smoke free at all times.
8. Sports arenas, parks, auditoriums, convention halls, bingo/beano halls, private club halls and their common areas shall be smoke free at all times.



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9. Every room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City, shall be smoke free at all times.
10. Lobbies, hallways, stairways and other common areas in lodging establishments, restaurants, apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities, and multi-unit commercial facilities shall be smoke free at all times.
11. Polling Places shall be smoke free at all times.
12. Smoking shall be prohibited within 20 feet of any entrance to any enclosed area where smoking is prohibited to ensure that smoke does not enter the area through entrances, windows, ventilation systems, or any other means.

E. 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. However, smokers and property owners must ensure that smoke from a smoker's residence does not enter the common areas of the residence or any part of any other residential unit on the premises.
2. Hotel and motel rooms rented to guests that are designated as "smoking rooms", provided that at least 75% of the rooms are 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 Board of Health.
3. The bar area of a private club, with active locations in Peabody at the time of the original enactment of this regulation, provided that as of the original enactment date it is (A) separated from the non-smoking area of the private club by location in a separate room or by means of physical barriers that completely enclosed the bar area of the private club utilizing self-closing doors and is (B) served by a board of health-approved key entry system that prohibits entry by the general public into the bar area, and (C) employees must be members of the club. Any bar area that permits smoking cannot be used for bingo or beano. Any private club which initiates active membership locations in Peabody after the date of enactment of these regulations shall be smoke free at all times.
4. Private or semiprivate rooms of nursing homes and long term care facilities, which are separately ventilated, occupied by one (1) or more patients, and all of who are smokers who have requested in writing to be placed in rooms where smoking is permitted.



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Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

F. 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 Peabody 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 Peabody Board of Health.

G. Violations:

Any individual, employer, or his or her business agent, who violates any provision of this regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. It shall be the responsibility of the employer, or his or her business agent, to ensure compliance with all sections of this regulation. Non-Criminal disposition authority can be found at Code of the City of Peabody Massachusetts Sec. 1-11 and Sec 1-12. The violator may have a fine levied for violations of these regulations by the City of Peabody Board of Health or its designated agent. Each day on which any violation exists shall be deemed to be a separate offense.

Penalty:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00) shall be levied at the discretion of the Board of Health.
2. In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred fifty dollars (\$250.00) shall be levied at the discretion of the Board of Health.
3. In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) shall be levied at the discretion of the Board of Health.

In addition, if violations of this regulation occur within a workplace for which a Tobacco and Nicotine Delivery Sales Permit has been issued, the Board of Health may, after a public hearing, suspend, revoke, or refuse to renew the permit.

H. Effective Date:

This regulation shall take effect 30 days after adoption by the Peabody Board of Health. Date of adoption: (date). Effective date: (date).