

## Chapter 217. Health and Sanitation

### Article IV. Tobacco and Nicotine Delivery Product Control

#### §217-11. Findings and purpose

There exists substantial evidence that tobacco smoke causes cancer, heart disease, and various lung disorders. Increasing evidence further demonstrates that the harmful effects of tobacco smoke are not confined to smokers but may also cause severe discomfort and illnesses to nonsmokers. Further, there is valid concern that the use of Nicotine Delivery Systems 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. The purpose of this regulation is to protect the health of the Employees and general public in the town of Marblehead. Therefore, these regulations are promulgated under the authority granted to the Marblehead 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 ordinance or by-law or any fire, health or safety regulation. ”

#### §217-12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

**Characterizing flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

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

**Component part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

**Distinguishable:** Perceivable by either the sense of smell or taste.

**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 Marblehead.

**Enclosed:** a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and accessible by one (1) or more doors, including but not limited to an office, function room or hallway.

**Flavored tobacco product:** Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

**Nicotine Delivery Product:** Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, including products 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, Nicotine Delivery Systems, nicotine transdermal patches, nicotine inhalers, and nicotine chewing gum.

**Nicotine Delivery System:** 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.

**Outdoor space:** an outdoor area, open to the air at all times and cannot be Enclosed by a wall or side covering.

**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 sale of tobacco products as required to be issued by the Marblehead Board of Health.

**Smoke Constituent:** Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

**Smoking (or smoke):** the lighting and burning of a cigar, cigarette, pipe or other tobacco product 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, §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".

**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:** 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, 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. Ch. 270, §22 and 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

#### **§ 217-13. Restrictions on Smoking.**

- A. It shall be the responsibility of the Employer to provide a Smoke free environment for all Employees working in an Enclosed Workplace.
- B. Smoking is hereby prohibited in the town of Marblehead in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
- C. The use of any Nicotine Delivery System is prohibited wherever Smoking is prohibited per M.G.L. Ch. 270, §22.
- D. Smoking and the use of Nicotine Delivery Products is prohibited in any retail tobacco store, the public beaches, and public parks in the Town of Marblehead.

#### **§217-14. Tobacco and Nicotine Delivery Product Sales to Persons Under the Age of Twenty-One Prohibited.**

- A. No person shall sell tobacco or Nicotine Delivery Products or permit Tobacco or Nicotine Delivery Products to be sold to a person under the age of 21; or not being the person's parent of legal guardian, give tobacco or Nicotine Delivery Products to a person under the age of 21.
- B. Required Signage
  - 1) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 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. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Marblehead Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell Tobacco Products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
  - 2) The owner or other person in charge of a shop or other place used to sell Tobacco Products at retail shall conspicuously post signage provided by the Marblehead Board of Health that discloses current referral information about smoking cessation.
  - 3) The owner or other person in charge of a shop or other place used to sell Tobacco or Nicotine Delivery Products at retail shall conspicuously post a sign stating "The sale of Tobacco and Nicotine Delivery Products to persons under 21 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating, "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notice shall be no smaller than 8.5" by 11" and may be readily seen by a person standing at, or approaching the cash register. These notices shall directly

face the purchaser and shall not be obstructed from view or placed at a height of less than 4 or greater than 9 feet from the floor.

- C. Identification: Each person selling or distributing Tobacco or Nicotine Delivery Products shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.
- D. All retail sales of Tobacco or Nicotine Delivery Products must be face-face between the seller and the buyer and occur at the permitted location.

**§217-15. Tobacco and Nicotine Delivery Product Sales Permit:**

- A. No person shall sell or otherwise distribute Tobacco or Nicotine Delivery Products at retail establishments with the town of Marblehead without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Marblehead Board of Health. Only owners of establishments with a permanent, non-mobile location in Marblehead are eligible to apply for a permit and sell Tobacco Products or Nicotine Delivery Products at the specified location in Marblehead.
- B. As part of Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Marblehead Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all Employees who will be responsible for Tobacco and Nicotine Delivery Product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
- C. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
- D. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Marblehead Board of Health annually.
- E. A separate permit is required for each retail establishment selling Tobacco and/or Nicotine Delivery Products.
- F. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
- G. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any Employee to sell Tobacco Products or Nicotine Delivery Products until such Employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the Employer, that he/she has read the regulation and applicable state and federal laws.
- H. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or Nicotine Delivery Products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- I. Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- J. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.
- K. No person shall sell or distribute or cause to be sold or distributed any Flavored Tobacco Product at retail, except in Smoking Bars and Retail Tobacco Stores.

**§217-16. Violations and penalties; enforcement .**

- A. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of Tobacco and/or Nicotine Delivery Products. The violator 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 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and a Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - 3) In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sale Permit shall be suspended for thirty (30) consecutive business days.
- B. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Products Sales Permit for thirty (30) consecutive days.
  - C. The Marblehead Board of Health shall provide notice of the intent to suspend a Tobacco and 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 (7) days after the date of said notice. The permit holder or its business agent shall have the opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Marblehead Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All Tobacco Products and Nicotine Delivery Products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all Tobacco and Nicotine Delivery Products shall constitute a separate violation of this regulation.
  - D. Whoever violates any provision of this regulation 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.
  - E. Each day any violation exists shall be deemed to be a separate offense.
  - F. The Board of Health, the Director of Public Health and persons designated by the Director of Public Health shall have the authority to administer and enforce these regulations.

**§217-17 Interpretation of provisions.**

- A. Nothing in these regulations shall make smoking lawful in any area in which Smoking is or may hereafter be prohibited by law.
- B. Whenever the provisions of these regulations conflict with any other regulations, codes, bylaws, general laws or special acts, the provisions imposing the greatest restriction on smoking shall prevail.
- C. 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.

**§217-18 Effective date.**

These regulations as amended shall become effective July 1, 2016.