

REGULATIONS OF THE LOWELL BOARD OF HEALTH PROHIBITING SMOKING

SECTION 1: STATEMENT OF PURPOSE

The purpose of these regulations is to protect the health of the persons in the City of Lowell.

SECTION 2: AUTHORITY

These regulations are promulgated under the authority granted to the City of Lowell Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that ***"boards of health may make reasonable health regulations."*** It is further promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) which states 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. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth."

SECTION 3: DEFINITIONS

As used in these regulations, the following words shall have the following meanings, unless the context requires otherwise:

"E-Cigarette" shall refer to any electronic nicotine or substitute delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine or substitute to the user, or relies on vaporization of solid nicotine or substitute or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookahs or under any other product name.

"Hookah pipe" shall refer to a pipe with one or more long flexible tube(s) connected to a container where the smoke is cooled by passing through a liquid and may be referred to as a "hookah pipe", "water pipe", "hubble-bubble", "kalian", "narghile", or any derivative thereof.

"Manager", an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

"Municipal Building" shall refer to any building or facility owned, operated, leased or occupied by the municipality.

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

"Smoking" or "smoke", the lighting of a cigar, cigarette, pipe, or 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 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."

Retail Tobacco Store: An establishment that 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 tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Lowell Board of Health. A Retail Tobacco Store must demonstrate through documentation satisfactory to the Lowell Board of Health or its agents that at least ninety percent (90%) of its sales is derived from the sale of tobacco products, as defined in and in accordance with the Lowell Board of Health's *Regulations Restricting the Sale of Tobacco Products*. The aforementioned age restriction on entry shall not apply to employees of a Retail Tobacco Store.

"Vaping", the use or possession of e-cigarettes that are turned on or activated.

SECTION 4: SMOKING PROHIBITED

a) Smoking is hereby prohibited in the City of Lowell in areas herein provided in accordance with M.G.L. Ch. 270, §22 and §22(j);

b) Pursuant to M.G.L. Ch. 270, §22(j) smoking is hereby prohibited in the City of Lowell in "Smoking Bars" as defined in M.G.L. Ch. 270, §22(a) and herein, also known as "cigar bars" and "hookah bars," and outdoor spaces accessory to any "smoking bars. Additionally, smoking is prohibited in "Retail Tobacco Stores", as defined in M.G.L. Ch. 270, §22(a) and further restricted by the definition contained in this regulation;"

c) Hookah pipes (as defined herein), and the smoking thereof, is hereby prohibited in all establishments subject to Board of Health regulation in the City of Lowell, as well as outdoor spaces accessory thereto;

d) There shall be a buffer zone prohibiting smoking and vaping in the area within fifteen (15) feet of any municipal building entranceway accessible to the public, except this shall not apply to a smoker transiting through such fifteen foot area, nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.

e) The vaping of e-cigarettes, as defined herein, is prohibited where M.G.L Ch. 270, §22 or any other federal, state, or municipal laws or regulations prohibit smoking.

SECTION 5: ENFORCEMENT

a) Any person, or any owner, manager, or other person in control of a building or outdoor space, who violates these regulations or who allows, by action or inaction, any violation of these regulations shall be punished by a fine of:

- i. \$100 for the first violation;
- ii. \$200 for a second violation occurring within 2 years of the date of the first offense; and
- iii. \$300 for a third or subsequent violation occurring within 2 years of the second violation.

b) Each calendar day on which a violation occurs shall be considered a separate offense.

c) These regulations shall be enforced by the Board of Health and its designees.

d) Violations of these regulations may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

e) If an owner, manager or other person in control of a building or outdoor space violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health (105 CMR 661.000), the Board of Health, after notice and hearing, may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

f) The Board of Health shall provide notice of intent to suspend any Board of Health issued permit, which notice shall contain the reasons therefore 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 an opportunity to be heard at such hearing and shall be notified of the Board of Health’s decision and the reasons therefore in writing. 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. If the suspended permit is a tobacco sales permit, all tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

g) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department of the equivalent.

SECTION 6: SEVERABILITY

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

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding to provisions of Section 4 of these regulations, nothing in these regulations shall 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.

SECTION 8: ENFORCEMENT AUTHORITY

Enforcement of this regulation shall be by the Lowell Board of Health or its designated agent(s). Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Lowell Board of Health or its designated agent(s) and the Board shall investigate.

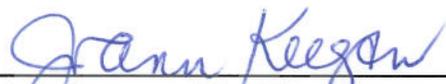
SECTION 9: REVOCATION

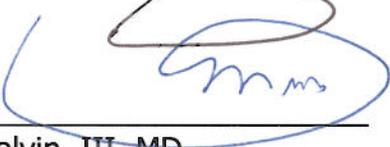
The Board of Health of the City of Lowell, by enactment of these rules and regulations prohibiting smoking, revokes and cancels, in their entirety, all previous rules and regulations pertaining to smoking adopted by said Lowell Board of Health.

SECTION 10: ADOPTION AND EFFECTIVE DATES

These regulations were adopted on 06/15/16 and they shall take effect on October 1, 2016.

Board of Health of the City of Lowell:

- 1. 
Jo-Ann Keegan, RN, MSN, Chairperson
- 2. 
John Donovan, DC
- 3. 
Kerry A. Hall, MEd

- 4. 
Craig Kelly
- 5. 
William J. Galvin, III, MD

A True Copy Attest
/s/ 
Kerry A. Alexander
Secretary to the Lowell Board of Health