

# Great Barrington Board of Health

## *Regulation of the Great Barrington Board of Health* **Local Smokefree Workplace Regulations**

**Effective Date: September 1, 2016**

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

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### **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;

Whereas environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning tobacco products, has been determined to cause 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);

Whereas the United States Environmental Protection Agency has 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 has also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002);

Now, therefore, the Great Barrington Board of Health recognizes the rights of those who wish to breathe smoke-free air and adopts this regulation to protect and improve the public health and welfare by prohibiting smoking in public places and other specified areas.

### **B. Authority**

This regulation is promulgated under the authority granted to the Great Barrington Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31, which provides 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: "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 . . . any . . . political subdivision of the Commonwealth."

### **C. Definitions**

All terms used in this regulation shall have the meaning given in Massachusetts General Laws Chapter 270, section 22, unless otherwise specified below:

- 1) **Bar:** An 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.
- 2) **Board:** The Great Barrington Board of Health.
- 3) **Cemetery:** shall include the following cemeteries in the Town: Elmwood, Ahavath Sholom, Green Lawn, Pelton Brook, Stony Brook, Mahaiwe and Water Street.
- 4) **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.

- 5) **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, halls, hallways, and common areas.
- 6) **Park:** shall include the following parks in the Town: Olympian Meadows, Finnerty Bank, South Street, Taconic Avenue, Railroad Station, Lake Mansfield, Memorial Field, Skate Park, Grove Street, Park Street, Stanley, Parrish, GB, Belcher Square, Tracy, Old Maids, and Town Hall.
- 7) **Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, employee, 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.
- 8) **Private Club:** A not-for profit entity, whether organized pursuant to M.G.L. Chapter 180 as a charitable corporation or otherwise with a defined membership. A private club is not a place of public accommodation but rather distinctly private. The criteria for determining whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. Subject to that regulation, an entity that holds an alcoholic beverages license as a “club” or a “war veterans” corporation or organization issued under M.G.L Chapter 138, section shall be presumed to be a private club.
- 9) **Public place:** Town buildings & grounds, any park, cemetery, facility or vehicle owned, leased, operated or occupied by the Town, and all other places open to the public including, but not limited to: retail stores, retail food stores, supermarkets, restaurants, 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 and elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outdoor platforms, meetings of a public body as defined in section 18 of chapter 30A of the Massachusetts General Laws, and licensed child-care locations.
- 10) **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.
- 11) **Retail Store:** Any establishment whose primary purposes 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.
- 12) **Smoking:** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.
- 13) **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 Massachusetts General Laws 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 be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".
- 14) **Town:** The Town of Great Barrington

- 15) **Town Buildings and Grounds**: shall include: Senior Center, Police Station, Fire Station, Wastewater Treatment Plant, DPW Garages, Town Hall, Mason Library, Ramsdell Library, Housatonic Community Center, Housatonic Fire Station, Transfer Station/Recycling Center, former Dewey School/Court House, and former Housatonic School.
- 16) **Workplace**: Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer.

#### **D. Smoking Prohibited**

- 1) Smoking is prohibited in all workplaces and all public places.
- 2) Pursuant to M.G.L. Chapter 270, § 22(j), smoking is also hereby prohibited in private clubs, enclosed spaces, retail tobacco stores, smoking bars and bars.
- 3) The use of e-cigarettes or other electronic nicotine delivery devices is prohibited wherever smoking is prohibited per M.G.L Chapter 270, § 22 and Paragraph D of this regulation.
- 4) Within ten (10) feet of the main entrance, exit, window or any other opening of a building open to the public that will allow second hand smoke to protrude into the building.

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 Great Barrington 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 Great Barrington 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 in operation as such.
- 2) Hotel and motel rooms which are designated as “smoking rooms”. 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) 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 whom are smokers who have requested in writing to be placed in rooms where smoking is permitted.

#### **G. Violations**

Any person who violates any provision of this regulation shall be subject to the following penalties:

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

- 2) In the case of a second violation within 24 months of the date of the first violation, a penalty of two hundred dollars (\$200.00).
- 3) In the case of three or more violations within a period of 24 months, a penalty of three hundred dollars (\$300.00).
- 4) Each day on which any violation exists shall be deemed to be a separate offense.

In addition, after a public hearing, the Board of Health may revoke a food service permit granted to a food service establishment upon a determination that the 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 therefor, in writing.

**H. Enforcement**

This regulation may be enforced by the Great Barrington Board of Health and its agents and designees, and by the Great Barrington Police Department.

Enforcement of this regulation may include 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 Board of Health or Police Department initiate an investigation.

**I. Severability**

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

**J. Conflict with Other Laws or Regulations**

Except as expressly provided, nothing in this regulation shall be deemed to amend or repeal any applicable fire, health or other regulations.

**K. Effective Date:** These regulations shall take effect September 1, 2016.

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Claudia Ryan, Chair

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Michael Lanoue

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Peter Stanton

**Date Regulation Approved:** June 2, 2016