

**Regulation of the Lee, Lenox, and Stockbridge Board of Health
Restricting the Sale of Tobacco Products & Nicotine Delivery Products**

Effective Date: July 1, 2012

These regulations replace any and all prior Youth Access to Tobacco Products.

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat (*Centers for Disease Control and Prevention (hereinafter "CDC"), Health Effects of Cigarette Smoking Fact Sheet, (January 2012)*); whereas among the 15.7% of students nationwide who currently smoked cigarettes and were aged less than eighteen (18) years, 14.1% usually obtained their own cigarettes by buying them in a store (i.e., convenience store, supermarket, or discount store) or gas station during the thirty (30) days before the survey (*CDC, Youth Risk Behavior, Surveillance Summaries. 2009, MMWR 2010:59 (No. SS-55) at 11*); whereas nationally in 2000, sixty-nine (69%) percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (*CDC, Youth Tobacco, Surveillance Summaries. 2000, MMWR 2001:50 (No. SS-04)*); whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (*U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.*); whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; whereas according to the CDC, cigarette price increases reduce the demand for cigarettes and thereby reduce smoking prevalence, cigarette consumption, and youth initiation of smoking (*U.S. Department of Health and Human Services. Reducing Tobacco Use: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, and* whereas commercial Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health; whereas commercial Roll Your Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the federal and state excise taxes that are imposed on conventionally manufactured cigarettes (*RYO FILLING STATION, www.ryofillingstation.com (Feb. 27, 2012)*). High excise taxes encourage adult smokers to quit and deter youth from starting (*Kenneth E. Warner, Smoking and Health Implications of a Change in the Federal Cigarette Excise Tax, 255 J. AM. MED. Ass'N 1028 (1986), Frank J. Chaloupka & Rosalie Liccardo Pacula, The Impact of Price on Youth Tobacco Use, in 14 SMOKING AND TOBACCO CONTROL MONOGRAPHS: CHANGING ADOLESCENT SMOKING PREVALENCE 193 (U.S. Dep't Health and Human Services et al. eds., 2001)*). Therefore, inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco; and whereas the sale of tobacco products and nicotine delivery products are incompatible with the mission of health care institutions because they are detrimental to the public health and undermine efforts to

educate patients on the safe and effective use of medication; and whereas educational institutions sell tobacco products to a younger population, which is particularly at risk for becoming smokers and such sale of tobacco products and nicotine delivery products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms; 2000 at 358); Now, therefore it is the intention of the Tri-Town Boards of Health to regulate the access of tobacco products and nicotine delivery products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Tri-Town Boards of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations"

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

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.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Commercial Roll-Your-Own (RYO) machine: A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products. Home-use RYO machines are not Commercial Roll-Your-Own machines.

E-Cigarette: Any electronic Nicotine Delivery Product 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 solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, which uses the services of one (1) or more employees.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or

subject to licensing, by the Massachusetts Department of Public Health under M.G.L. ch. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Minor: Any individual who is under the age of eighteen (18).

Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been 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 Product includes, but is not limited to, e-cigarettes.

Permit Holder: Any person engaged in the sale or distribution of tobacco and nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

Person: An individual, employer, employee, retail store manager or owner, the owner or operator of any establishment engaged in the sale or distribution of tobacco and nicotine delivery products directly to consumers.

Self-Service Display: Any display or commercial RYO machine from which customers may select or make a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel.

Tobacco Sales Certification Training: a certification training program which must be successfully completed by all tobacco and nicotine delivery product sales clerks engaged in the sale or distribution of tobacco and nicotine delivery products directly to the consumer. For the purposes of this section, the content of any tobacco and nicotine delivery product sales certification training program must be approved by the Board of Health. However, an equivalent training program approved by the State Department of Public Health will also meet the requirements of this provision. Certification shall expire three (3) years from the date of successfully completing said training at such time a re-certification training must be completed to maintain certification. The Board of Health shall establish a fee for the certification and re-certification training program.

Tobacco Sales Clerk: An individual, employer, employee, retail store manager, the owner or operator of any establishment engaged in the sale or distribution of tobacco and nicotine delivery products directly to consumers who can produce documentation that he/she maintains a valid tobacco and nicotine delivery product sales certification.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

Tri-Town Boards of Health: The Boards of Health in Lee, Lenox, and Stockbridge and their legally designated agent.

Vending Machine: Any automated or mechanical self-service device, which upon

insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or Nicotine Delivery Product.

D. Tobacco and Nicotine Delivery Product Sales to Minors Prohibited:

1. No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco or nicotine delivery products to a minor.

2. Required Signage:

a. 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 Lee, Lenox, and Stockbridge Boards 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 four (4) feet or greater than nine (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.

b. 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 Lee, Lenox, and Stockbridge boards of health that discloses current referral information about smoking cessation.

c. The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating that "The sale of nicotine delivery products to minors under 18 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 that "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they 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 four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco or Nicotine Delivery Products must be face-to-face between the seller and the buyer.

E. Tobacco and Nicotine Delivery Products Sales Permit:

1. No person shall sell or otherwise distribute tobacco or Nicotine Delivery Products at retail within the Tri-Town Boards of Health jurisdiction without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Tri-Town Boards of Health. Only owners of establishments with a permanent, non-mobile location in the Tri-Town Boards of Health jurisdiction are eligible to apply for a permit and sell tobacco products or Nicotine Delivery Products at the specified location in the Tri-Town Boards of Health.
2. As part of the initial tobacco and Nicotine Delivery Products Sales permit application process, the applicant will be provided with the Tri-Town Boards 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 both state laws regarding the sale of tobacco and this regulation.
3. Each applicant 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.
4. The fee for a tobacco and Nicotine Delivery product sales permit shall be determined by the Tri-Town Boards of Health annually. All such permits shall be renewed annually by January 1st.
5. A separate permit is required for each retail establishment selling tobacco and nicotine delivery products
6. Each tobacco and nicotine delivery product sales permit shall be displayed at the retail establishment in a conspicuous place.
7. 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 state laws regarding the sale of tobacco and nicotine delivery products 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 laws.
8. 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.
9. 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.
10. Issuance and holding of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

11. No person or entity selling tobacco products shall allow anyone under eighteen (18) years of age to sell cigarettes or other tobacco products.

F. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of tobacco products for free or at a reduced price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permittee.

G. Out-of-Package Sales:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

H. Self Service Displays:

All self-service displays of tobacco products or nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

I. Tobacco Vending Machines:

All tobacco and nicotine delivery product vending machines are prohibited.

J. Commercial Roll-Your-Own Machines:

All commercial Roll-Your-Own machines are prohibited.

K. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions:

No health care institution located in the Tri-Town Boards of Health jurisdiction shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

L. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:

1. No educational institution located in the Tri-Town Boards of Health jurisdiction shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

M. Certification:

1. No person shall sell any tobacco product or nicotine delivery product without first successfully completing an approved tobacco sales certification training and obtains confirmation of certification.

2. New employees have thirty (30) consecutive days to successfully complete an approved tobacco and nicotine delivery product sales certification training. Employers must provide documentation confirming new hire if requested by Board of Health.

N. Violations pertaining to the Tobacco Sales Clerk:

1. It shall be the responsibility of the Tobacco Sales Clerk to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and nicotine delivery products. The violator shall receive:

a. In the case of a first violation:

Tobacco Sales Clerk, a fine of fifty dollars (\$50.00) and tobacco and nicotine delivery products sales certification shall be suspended for seven (7) consecutive business days, must provide proof that he/she has signed up for the next available tobacco retailer training within seven (7) consecutive business days before selling tobacco and nicotine delivery products. Completion of training required within thirty (30) consecutive business days unless otherwise written consent from Tri-Town Boards of Health to extend the time period.

b. In the case of a second violation within 24 months of the date of the current violation:

Tobacco Sales Clerk, a fine of one hundred dollars (\$100.00) and tobacco and nicotine delivery product sales certification shall be suspended for thirty (30) consecutive business days, must provide proof that he/she has signed up for the next available tobacco retailer training within thirty (30) consecutive business days before selling tobacco and nicotine delivery products. Completion of training required within thirty (30) consecutive business days unless otherwise written consent from Tri-Town Boards of Health to extend the time period.

c. In the case of a third violation within a 24 month period:

Tobacco Sales Clerk, a fine of one hundred and fifty dollars (\$150.00) and tobacco and nicotine delivery product sales certification shall be suspended for three hundred and sixty five (365) consecutive days.

2. Refusal to cooperate pursuant to this regulation shall result in the suspension of the tobacco and nicotine delivery product sales certification and/or tobacco and nicotine delivery product sales permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any Tobacco and Nicotine delivery product Sales Clerk who engages in the sale or distribution of tobacco and nicotine delivery products directly to a consumer while his or her certification is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

4. The Tri-Town Boards of Health shall provide notice of the intent to suspend tobacco and nicotine delivery product sales certification, which notice shall contain the reasons therefore. A hearing may be requested in writing within seven (7) days of receipt of letter. The Tobacco and Nicotine delivery Product Sales Clerk 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. The Tri-Town Boards of Health after a hearing, may suspend the tobacco and Nicotine Delivery Product sales certification.

5. Any Tobacco Sales Clerk who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

O. Violations pertaining to the permit holder and/or his or her business agent:

1. It shall be the responsibility of the 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 nicotine delivery products. The violator shall receive:

a. In the case of a first violation:

Permit holder and/or his or her business agent, a fine of two hundred and fifty dollars (\$250.00).

b. In the case of a second violation within 24 months of the date of the current violation:

Permit holder and/or his or her business agent, a fine of three hundred and fifty dollars (\$350.00) and the tobacco and nicotine delivery products sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of third violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of five hundred dollars (\$500.00) and the tobacco and nicotine delivery product sales permit shall be suspended for fourteen (14) consecutive business days.

d. In the case of fourth violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of five hundred dollars (\$500.00) and the tobacco and nicotine delivery sales permit shall be suspended for thirty (30) consecutive business days.

e. In the case of fifth violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of seven hundred and fifty dollars (\$750.00) and the tobacco and nicotine delivery product sales permit shall be suspended for three hundred and sixty five (365) consecutive business days.

2. Refusal to cooperate pursuant to this regulation shall result in the suspension of the tobacco and nicotine delivery product sales certification and/or tobacco and nicotine delivery product sales permit for thirty (30) consecutive business days.

3. Any permit holder who allows a sales clerk to sell or distribute tobacco and/ nicotine delivery products directly to a consumer without first obtaining a tobacco and/or nicotine delivery products sales certification shall result in a fine of two hundred and fifty (\$250.00) dollars.

4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco and nicotine delivery products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

5. The Tri-Town Boards of Health Board of Health shall provide notice of the intent to suspend a tobacco and nicotine delivery products permit holder, which notice shall contain the reasons therefore. A hearing may be requested in writing within seven (7) days of receipt of letter. 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. The Tri-Town Boards of Health after a hearing, may suspend the tobacco and nicotine delivery products sales permit. All tobacco 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.

6. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

P. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.

Q. Enforcement:

Enforcement of this regulation shall be by the Tri-Town Boards of Health or its designated agent(s).


Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Tri-Town Boards of Health or its designated agent(s) and the Board shall investigate.

R. Severability:

If any provision of these regulations is deemed invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

S. Effective Date: July 1, 2012


Dr. Robert Spiser, Chair


Leslie Trachier Daley,
CRW, BSW, MS

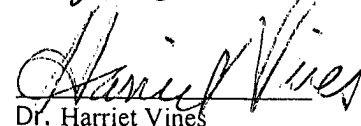

Barbara Besaw Dated

Jean Marie Milne, Chair


Mary Jane Pignatelli


Dr. Chris Trancynger Dated


Dr. Matthew Mandel, Chair


Dr. Harriet Vines

Scott Muir Dated

May 4, 2012
Suzanne M Scarpa
SUZANNE M. SCARPA
TOWN CLERK - LEE

Town Clerk Attested Date: 5-4-12

Date of Published Notice of Public Hearing: April 4 2012 and April 11, 2012

Date of Summary Regulation Published in Public Newspaper: ~~April~~ May 5, 2012

ORIGINAL

Tri-Town Health Department
Lee, Lenox and Stockbridge Boards of Health
Environmental Tobacco Smoke Tobacco Regulations
Effective Date: July 1, 2012

These regulations replace any and all prior Environmental Tobacco Smoke Tobacco 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; 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 Boards of Health of Lee, Lenox and Stockbridge 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.

- B. This regulation is promulgated under the authority granted to the Lee, Lenox, and Stockbridge Boards 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 or operator of any establishment to be the manager or otherwise in charge of said establishment.

Board: The Boards of Health of the towns of Lee, Lenox and Stockbridge.

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 towns of Lee, Lenox, and Stockbridge.

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, hallways, and common areas.

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, 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 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 A, 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 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.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.

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".

Town: The Towns of Lee, Lenox and Stockbridge

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 including outdoor seating areas and private clubs.
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.
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 Lee, Lenox and Stockbridge Boards 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 Lee, Lenox and Stockbridge Boards 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 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 employer, or his or her business agent, who violates any provision of this regulation shall receive:

1. In the case of a first violation, a fine of two hundred dollars and fifty dollars (\$250.00).
2. In the case of a second violation within a 24 months of the date of the first violation, a fine of three hundred and fifty dollars (\$350.00).
3. In the case of three or more violations within 24 months of the current violation, including the current violation, a fine of five hundred dollars (\$500.00).
4. In case of a food service establishment the Board of Health may revoke a food service permit granted pursuant to 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.

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

H. Enforcement:

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

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 fo 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.

