



**Town of Framingham
Board of Health**

**REGULATION PROHIBITING SMOKING OF
MARIHUANA AND/OR THC IN
WORKPLACES AND PUBLIC PLACES**

**These regulations are adopted in accordance with
the authority granted by the General Laws of the
Commonwealth of Massachusetts, Chapter 111,
Section 31, And Chapter 94C, Section 32L**



**TOWN OF FRAMINGHAM, MASSACHUSETTS
REGULATION PROHIBITING SMOKING OF MARIHUANA AND/OR THC
IN WORKPLACES AND PUBLIC PLACES**

SECTION 1

The purpose of this regulation is to protect the health of the employees and general public in the Town of Framingham.

**SECTION 2
STATEMENT OF POLICY**

This regulation is promulgated under the authority granted to the Framingham Board of Health, pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(2)(j) which states in part that “[n]othing 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.”

Further, this regulation is specifically permitted by Massachusetts General Laws, Chapter 94C, Section 32L, specifically, Section 2 of "An Act Establishing A Sensible State Marihuana Policy," which provides, in part, “[N]othing contained herein shall prohibit a political subdivision of the Commonwealth from enacting ordinances or bylaws regulating or prohibiting the consumption of marihuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marihuana or tetrahydrocannabinol.”

Further, this regulation is promulgated in order to augment the Town’s Tobacco smoking regulation, as set forth in § IV of the Rules and Regulations Relative to the Sale and Use of Tobacco Within the Town of Framingham, effective May 5, 2003, as amended March 20, 2007. Nothing herein shall be construed in any way preempting any provision thereof.

Further, this regulation is promulgated to negate the potential deleterious effects of second-hand smoke as emanating from marihuana and THC, upon others, by, without limitation, causing discomfort and illness to nonsmokers; interfering with others’ right to breathe smoke-free air and

aggravating allergies, and causing irritation to the eyes, nose, and throat, to both smoker and non-smoker exposed to secondhand smoke.

SECTION 3: **DEFINITIONS**

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

“Board of Health” - The Board of Health of the Town of Framingham

“Compensation” - money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

“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.

“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 or more employees at one or more workplaces, at any one time, including the Town of Framingham

“Enclosed” - a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

“Establishment” - Any person, firm, corporation, establishment or agency within the Town of Framingham.

“Food Service Establishment” - Any establishment holding a Food Service Permit within the Town of Framingham.

“Health Care Facility” - Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

“Marihuana” - a psychoactive drug extracted from the plant *Cannabis sativa*, or more often, *Cannabis sativa* subsp. *indica*. The herbal form of the drug consists of dried mature flowers and subtending leaves of pistillate (female) plants. The resinous form, known as hashish, consists primarily of glandular trichomes collected from the same plant material. The major biologically

active chemical compound in marihuana is Δ^9 -tetrahydrocannabinol (delta-9-tetrahydrocannabinol), commonly referred to as THC. Marihuana is also known as marijuana.

“Membership association” - a not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

- i. a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or
- ii. a corporation organized under Massachusetts General Laws Chapter 180; or
- iii. an established religious place or worship or instruction in the Town of Framingham whose real or personal property is exempt from taxation; or
- iv. a veterans’ organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

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

“Premises” – includes the following: healthcare facilities, public places under the jurisdiction of the Framingham Board of Health, public transportation vehicles, retail stores, retail food stores, smoking bars, retail tobacco stores, membership associations also known as private clubs, food establishments licensed and/or permitted by the Board of Health of the Town of Framingham, or bar rooms licensed and/or permitted by the Board of Health and/or the Board of Selectmen of the Town of Framingham

“Public Place” - An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: Food Service Establishments, auditoriums, licensed child care locations, public schools, private schools, summer camps, clinics, hospitals, health care facilities, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, retail food stores, indoor sports arenas, public transit facilities, enclosed shopping malls, stairwells, hallways, entranceways, public restrooms, elevators accessible to the public, common areas in privately owned buildings, and any clubs, rooms or halls when open to the public or when used for public meetings. Public places shall also include all areas available to and customarily used by the general public in all business and non-profit entities patronized by the public, including but not limited to: offices, banks, laundromats, hair cutting establishments and salons, and hotels and motels.

“Public Transportation Vehicle” - Buses, taxis, and other means or transportation available to the general public while such means or transportation is operating within the boundaries of the Town including indoor platforms by which such means of transportation may be accessed.

“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 Town of Framingham Board of Health.

“Smoking” or “smoke” - the lighting of a 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".

“THC” – a compound known as Δ^9 -tetrahydrocannabinol (delta-9-tetrahydrocannabinol).

“Workplace” - an indoor area, structure or facility or a portion thereof, at which one 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.

“Work space or work spaces” - an enclosed area occupied by an employee during the course of his employment.

SECTION 4: **SMOKING MARIHUANA AND THC-CONTAINING PRODUCTS PROHIBITED**

A. It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace, including, without limitation, smoke caused by marihuana or THC.

B. Smoking of marihuana and THC is hereby prohibited in Framingham in enclosed or outdoor space belonging to or maintained by healthcare facilities, public places, public transportation vehicles, retail stores, retail food stores, smoking bars, retail tobacco stores, membership associations also known as private clubs, food establishments licensed and/or permitted by the Board of Health of the Town of Framingham, or bar rooms licensed and/or permitted by the Board of Health and/or the Board of Selectmen of the Town of Framingham, in accordance with M.G.L. Ch. 270, §22.

SECTION 5: ENFORCEMENT

A. Violations of this regulation may be enforced as provided in Massachusetts General Law, and/or the use of Massachusetts General Laws, Chapter 40, Section 21D (Non-criminal Disposition), and Massachusetts General Laws, Chapter 94C Section 32L, as amended.

B. Except where otherwise provided by law, enforcement of, and prosecution for offenses under this regulation are authorized to be initiated by a constable, a police officer, the Board of Health or any of its agents.

C. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate an investigation.

SECTION 6
VIOLATIONS AND PENALTIES

A. Permitting the unlawful smoking of marihuana and/or THC

1. All penalties, as listed below, shall be applied to the holder of any permit, issued by the Town of Framingham where such permit exists, or to the person, firm, corporation, establishment or agency violating any regulation, where such a permit does not exist.

B. Smoking Marihuana and/or THC in contravention of Section 4 (B):

1. Any individual who smokes marihuana or THC in an area in which smoking is prohibited under Section 4, shall be subject to a fine of fifty dollars (\$50.00) per offense.

2. Any person having control of premises upon which smoking marihuana or THC is prohibited by and under the authority of this regulation, and who allows others to violate this regulation shall be subject to the following fines under Section 4 are as follows:

First offense , or any other offense occurring more than three years after any previous offense	\$100.00
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Second Offense , within a 3 year period of the date of the last offense	\$200.00
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Third Offense and Subsequent Offenses , within a 3 year period from the date of the current offense	\$300.00 and suspension, revocation, or non-renewal of any Town-issued permit or permits
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3. This regulation shall be enforced by the Board of Health and its designees, including specifically, a constable, police officer, the Board of Health or its agents.

4. Violations of Section 4 shall 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 without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

SECTION 6:
SEVERABILITY

If any paragraph or provision of this regulation 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

Nothing in this regulation shall preempt any Town By-Law, Article or other Regulation affecting the public consumption of marihuana or tetrahydrocannabinol (THC) containing substances.

SECTION 8:
EFFECTIVE DATE

This regulation will take effect upon publication of a summary of the regulation.

Dated: January 20, 2009.

Michael R. Hugo, Esq., Chairman

Tammy Harris, M.D., Secretary

Nelson Goldin