

FOXBOROUGH BOARD OF HEALTH REGULATIONS AFFECTING SMOKING

SECTION 1 AUTHORITY

Recent information has been published by the Federal Environmental Protection Agency and studies documented by the National Cancer Institute all conclusively link the incidence of cancer, respiratory diseases and other adverse health effects including death, to the involuntary inhalation of secondary tobacco smoke. The Foxborough Board of Health, hereby adopts regulations designed to eliminate the involuntary exposure to secondary tobacco smoke, wherever reasonably possible, of persons within the Town of Foxborough. These regulations are adopted as reasonable health regulations to protect the health of Foxboro residents and other persons within the Town of Foxborough, pursuant to authority granted under M.G. L. c. 111, section 31.

SECTION 2 DEFINITIONS:

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

Bar: any area which is primarily dedicated to the serving of alcoholic beverages and in which the service of food shall be limited to "packaged" items only, as defined by the State Food Code. (Amended 1/27/2003)

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.

Employee: Any individual who performs services for an employer.

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

Enclosed: a space bounded by walls and under a roof.

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

Nonsmoking Area: all areas within a public place, unless it meets specific criteria to be designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is permitted.

Public Place: an enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: restaurants, auditoriums, licensed child care locations, schools, clinics, hospitals, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, retail food establishments, indoor sports arenas, public transit facilities, haircutting establishments, laundromats, any clubs, rooms or halls when used for public meetings, beano or bingo games, elevators accessible to public, hotel and motel lobbies, stairwells, hallways, entrance ways, public restrooms, and common areas in privately owned buildings. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Permit Holder: An owner or operator of any establishment engaged in the sale of tobacco products that applies for and receives a tobacco sales permit, or his or her agent.

Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

Restaurant: any establishment serving food for consumption on the premises which maintains tables for the use of its customers. This includes cafeterias and cafeterias in the workplace.

Retail Food Establishment: any establishment licensed by the Board of Health commonly known as a supermarket or grocery store in which the primary activity is the sale of food items to the public for off-premises consumption.

Retail Store: any establishment selling goods, articles or services to the public.

Seating Capacity: the capacity designated on the occupancy permit of a restaurant, theater, or sports arena.

Self Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Smoking: the lighting of any cigarette, cigar, pipe, or other tobacco product or having possession of any lighted cigarette, cigar, pipe, or other tobacco product.

Smoking Area: the area(s) within a public place which meet specific ventilation criteria that eliminates the migration of tobacco smoke from this area. This designated area must be so posted and is the only area(s) where smoking is permitted.

Indoor Sport Arena: any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

Workplace: any area with a structure or portion thereof at which two(2) or more employees perform services for their employer. It also includes employee lounges, rest rooms, conference rooms, hallways, stairways, and entranceways.

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

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

SECTION 3 PROHIBITION OF SMOKING IN PUBLIC PLACES

No person shall smoke in any public place within the Town of Foxborough, except in areas designated to allow smoking. These smoking areas will be specifically approved by the Board of Health, where it can be demonstrated that tobacco smoke will be adequately controlled or vented in such a manner that persons who are not within this area will not be exposed to tobacco smoke. Hallways, entrance ways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshal, the Massachusetts Department of Public Health or other Federal, State, or local agencies, may not be designated as areas where smoking is permitted.

No place governed by these regulations shall be designated as a smoking area in its entirety. Nothing in these regulations shall be construed to require the creation of smoking areas.

3.10 RESTAURANTS

- (1) The prohibition on smoking in public places shall apply to all restaurants, except in specifically designed smoking areas. Smoking areas may be designated by the proprietor or other person in charge of a restaurant. The person who so designates this area as smoking will be the person responsible for ensuring that all of the provisions contained in these regulations are adhered to pertaining to its use. Smoking areas shall comprise no more than 25% of the seating capacity of the restaurant.
- (2) All bars which are located or have seats in the same room as the restaurant shall ensure that ventilation systems are of sufficient design and capacity to draw tobacco smoke generated in this area, away from the restaurant. This air may not be recirculated within the building or mixed with the general dilution ventilation for the building.

3.11

All restaurants shall become smoke-free six months after publication of the Foxborough Board of Health approval of these regulations or obtain a Special Permit to Operate a Smoking Area issued by the Foxborough Board of Health per § 3.12.

3.12 SPECIAL PERMIT TO OPERATE A SMOKING AREA

- (1) Any restaurant that desires to retain their smoking area designation after the effective date of these regulations shall apply to the Board of Health for a Special Permit to Operate a Smoking Area. This permit will be renewable yearly and will be effective concurrent to the yearly license to operate a food establishment as issued by the Board of Health.
- (2) The owner or operator shall appear before the Board of Health and demonstrate how the operation of this smoking area meets the criteria set forth in these regulations which require elimination of environmental tobacco smoke outside of this area. The owner shall design and locate this area, utilizing permanent physical barriers and/or ventilation systems which eliminate the presence of tobacco smoke in all other areas of the restaurant. The smoking area shall not comprise more than 25% of the total seating capacity of the restaurant. If the bar and lounge area are located within the same room, (i.e. not divided by permanent structures such as walls) all seats including those at the bar or lounge shall be included when determining the seating capacity.
- (3) The owner or operator of the restaurant shall demonstrate how (s)he will ensure that provisions to maintain a smoke free environment are met throughout the year, Reasonable effort will be made to ensure that these provisions are met.

- (4) The owner or operator shall maintain records of all maintenance and testing performed to demonstrate the effectiveness of the system(s) , Logs will include but are not limited to) :
- (a) make, model, and design capacity of system,
 - (b) Company contracted to maintain the system(s),
 - (c) dates and efficiency tests performed on the system,
 - (d) repairs to system, ,
 - (e) analyses of vapor and particulate emissions from system, .
 - (f) dates and nature of complaints made relative to the failure of the system to properly contain Environmental Tobacco Smoke within the smoking area.

Records shall be made available to the Board of Health or Health Agent upon request and must be provided for review prior to renewal of smoking area permit.

- (5) Each restaurant shall-develop and comply with a policy of asking seating preference of patrons.

3.20 OTHER PUBLIC PLACES

3.21

The prohibition of smoking in public places shall apply to all schools, hospitals, clinics, nursing homes, long term care facilities, libraries, museums, municipal buildings, theaters, indoor sports arenas, hotel and motel and inn lobbies, educational facilities, taxis and other public transportation.

3.22

Smoking areas may be designated in non-public schools, hospitals, clinics, nursing homes, long term care facilities, libraries, museums, municipal buildings, theaters, indoor sports arenas, educational facilities provided that they are located utilizing physical barriers and/or ventilation systems which ensure that tobacco smoke does not migrate from this designated area.

3.30 RETAIL STORES

3.31

The prohibition of smoking in public places shall apply to retail stores doing business with the general public. Smoking areas may be designated in an area of the store which is not open to the general public provided that they are located utilizing physical barriers and/or a ventilation system which ensures that tobacco smoke does not migrate from this designated area.

3.40 OPTIONAL EXCLUSIONS

3.41

Notwithstanding any other provision' of these regulations, these smoking restrictions are optional in the following public places:

- ~~(1)~~ Any business which has been declared by its owner, operator, manager, or other person in charge, to be a non-smoking establishment, and is posted to that effect;
- ~~(2)~~ Bars
- (3) Retail stores where the primary business is the sale of tobacco products;
- (4) Private residences;
- ~~(5)~~ Hotel and motel rooms rented to guests;
- ~~(6)~~ Hotel and motel conference/meeting rooms, and public and private assembly rooms while these places are being used for private functions provided that ventilation from these

areas is not recirculated to or mixed with makeup air supplying other non-smoking areas within the building;

~~(7)~~

Private or semiprivate rooms of nursing homes and health facilities, including long-term care facilities, occupied by one (1) or more patients, all of whom are smokers who have requested, in writing on the health care facility's admission form, to be placed in a room where smoking is permitted. The health care facility shall make every effort to locate groups of smoking rooms, utilizing physical barriers and/or ventilation systems in such a way that eliminates smoke migration to other areas of the facility;

- (8) Taxis and Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle;
- (9) Performers upon the stage, provided that the smoking is part of a theatrical production.

SECTION 4 IMPLEMENTATION

4.10

It shall be incumbent on every owner of places covered by these regulations, or his/her designee, to prevent smoking except in designated smoking areas as set forth in these regulations by:

- (1) Conspicuously posting a notice or sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.
- (2) conspicuously posting "Smoking" and "No Smoking" signs, or the international No Smoking" symbol (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) in every area where smoking is prohibited or permitted by these regulations.
- (3) Arranging seating so that physical barriers, ventilation systems, and available space are utilized to eliminate the exposure to smoke of persons outside the area (s) where smoking is permitted.
- (4) Asking patrons who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to extinguish all smoking materials and refrain from smoking while within the subject public place.
- (5) Use any other means which may be appropriate and reasonable to ensure compliance with these regulations.

SECTION 5 PROHIBITION OF SMOKING IN THE WORKPLACE

Six months from the date of approval of these regulations by the Foxborough Board of Health, it will be unlawful per these regulations, for any person to smoke or to allow smoking in any workplace except in specifically designated areas described in Section 3 of these regulations.

5.10 EMPLOYER

- (1) Each employer shall provide a smoke free environment for his/her employees.
- (2) Each employer will prohibit smoking in all areas of the workplace, except in areas specifically designated as areas where smoking is permitted. Areas may be designated as smoking areas provided:
 - (a) physical barriers and ventilation systems are used to eliminate smoke from exiting the smoking area;
 - (b) Hallways, elevators, entranceways, stairwells, restrooms, and waiting areas shall not be designated as smoking areas;
 - (c) All areas where smoking is prohibited and designated area(s) where smoking is permitted shall be appropriately and adequately posted consistent with Section 4.10 (1) and (2) of these regulations.

SECTION 6 LIABILITY

6.10 PUBLIC PLACES

It shall be the responsibility of all persons who enter public places within the Town of Foxborough, to comply with the conditions set forth in these regulations.

6.11 OWNERS and DESIGNEE of OWNER

- (1) The owner(s) or his/her designee(s) shall be responsible for complying with the conditions set forth in these regulations.
- (2) The owner and his/her designee shall be responsible jointly and severally for making every effort to ensure compliance with the conditions set forth in these regulations.

6.12 GENERAL PUBLIC

Any person who has been sufficiently noticed or informed of the provisions set forth in these regulations will be responsible for complying with the provisions set forth in these regulations. Sufficient notice or sufficiently informed shall include the presence of posted legible signs of sufficient number and location to be reasonably observed by persons entering the subject public place. Verbal notice duly given by the owner or his/her designee to any and all persons relative to provisions set forth in these regulations shall be deemed sufficient information to constitute notice.

6.20 WORKPLACE

6.21 EMPLOYERS

- (1) Each person having control or premises upon which smoking is prohibited by these regulations, or his/her agent or designee, shall conspicuously display upon the premises, an appropriate number of signs consistent with provisions set forth in Section 4.10 (1) and (2) of these regulations.
- (2) The employer(s) and his/her designee(s) shall be jointly and severally responsible for complying with the conditions set forth in these regulations.
- (3) The employer(s) and his/her designee(s) shall be responsible jointly and severally for making every effort to ensure compliance with the conditions set forth in these regulations.
- (4) It shall be unlawful for any employer or other person to ignore or knowingly permit a violation of any provision of these regulations.

6.22 EMPLOYEES

- (1) Any employee or other person in the workplace who has been sufficiently noticed or informed of the provisions set forth in these regulations will be responsible for complying with the provisions set forth in these regulations. Sufficient notice or sufficiently informed shall include the presence of posted legible signs of sufficient number and location to be reasonably observed by persons entering the subject workplace. Verbal notice duly given by the owner or his/her designee to any and all persons relative to provisions set forth in these regulations shall be deemed sufficient information to constitute notice.
- (2) It shall be unlawful for any person to ignore or knowingly violate any provision of these regulations.

SECTION 7 ENFORCEMENT PUBLIC PLACES AND WORKPLACE VIOLATIONS

7.10 General Public

Any person who smokes in an area where smoking is prohibited as set forth in these regulations, shall be subject to a fine of not less than twenty five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each violation.

7.20 Owners and Employers and their designees

Any owner or employer and/or any of their designees in charge of a public place or a workplace who fails to comply with these regulations shall be subject to:

- (1) a fine of not less than \$50 dollars (\$50.00) nor more than \$200 dollars (\$200.00) for each day a violation continues; and
- (2) Subsequent violations may result in suspension of any license issued by the Board of Health for that public place or workplace for a period of up to two days per violation, per day of violation.

7.30 Complaints

- (1) In addition to the remedies provided by §7.10 and § 7 .20 above, the Board of Health or any person aggrieved by the failure of the proprietor or employer or any other person in charge of a public place or workplace to comply with any of the provisions set forth in these regulations, may apply for injunctive relief to enforce the provisions of this subsection, in any court of competent jurisdiction.
- (2) Any person aggrieved by the failure or refusal to comply with provisions of these regulations in any municipal building may make a written complaint to the head of the Department or agency occupying the area (s) where the violation takes place. Said agency or Department head shall respond in writing within ten (10) working days to the complainant that (s) he has investigated the area (s) of the complaint and how (s)he has enforced the provisions of this section as provided herein.

SECTION 8 OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking in areas where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes,

SECTION 9 TOBACCO SALES TO MINORS PROHIBITED

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; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.), and whereas an estimated three thousand minors begin smoking every day in the United States (See, "Cancer Facts & Figures - 1993," American Cancer Society); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Foxborough Board of Health to curtail the access of tobacco products by minors.

B. AUTHORITY:

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

C. SALES TO MINORS

In conformance with Massachusetts General Law, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the age of eighteen or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen, shall be punished by a fine of not less than one hundred dollars (\$ 100.00) for the first offense, not less than two hundred dollars (\$ 200.00) for the second offense, and not less than three hundred dollars (\$ 300.00) for the third and subsequent offense.

D. POSTING STATE LAW.

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 to be posted shall be that notice provided by the Massachusetts Department of Public Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single package tobacco product sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such 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. For all other cash registers that sell tobacco products, a notice shall be attached which is no smaller than nine (9) square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than four (4) feet or more than nine (9) feet from the floor.

The Foxborough Board of Health or its Health Agent shall enforce this regulation.

Whoever violates this provision shall be punished by a fine of not more than fifty dollars (\$ 50.00). Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of ten dollars (\$ 10.00).

E. IDENTIFICATION REQUIRED

Each person shall verify 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.

F. TOBACCO SALES PERMIT

- (1) No establishment or business shall sell or otherwise distribute tobacco at retail within the town of Foxborough without first obtaining a tobacco sales permit issued annually by the Foxborough Board of Health.
-  (2) As part of the application process, the applicant will be provided with the Foxborough 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 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 sales permit can be issued.
- (4) The fee for a tobacco sales permit shall be determined by the Foxborough Board of Health. All such permits shall expire annually on December 31st.
- (5) A separate permit is needed for each retail establishment selling tobacco.
- (6) Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
- (7) No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation 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 laws.
- (8) A tobacco sales permit is non-transferable, except a new permit may be issued to a retailer who changes location.

- (9) Issuance of a tobacco 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.

G. SELF SERVICE DISPLAYS

All retail sales of tobacco must be face-to-face between the seller and the buyer.

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

H. FREE DISTRIBUTION/SAMPLING

No person shall distribute or cause to be distributed, any free samples of tobacco products.

I. VENDING MACHINES

Vending machines are prohibited except those Vending machines that are located in facilities licensed under M.G.L. c. 138 § 12, to serve alcoholic beverages for consumption on the premises, if the vending machine: 1. is equipped with a lock-out devise that locks out sales from the vending machine unless the locking mechanism is released by an outlet employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to outlet personnel; and 2. is located within the immediate vicinity and exclusive control of outlet personnel such that all purchases are observable by outlet employee(s) controlling the lock-out device; and 3. is posted with a sign stating that minors are not permitted to purchase tobacco and notifying customers of the lock-out device and identifying the outlet employee(s) to contact to purchase tobacco from the machine.

J. SALE OR DISTRIBUTION

Sale or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited.

K. VIOLATIONS:

- (1) It shall be the responsibility of the permit holder and/or his or her agent to ensure compliance with all sections of this regulation pertaining to his/her place of business or any person in violation of any section of this regulation. The violator may receive:
- a. In the case of a first violation, a fine of up to one hundred dollars (\$100.00).
 - b. In the case of a second violation within 12 months of the date of the first violation, a fine of up to two hundred dollars (\$200.00) and the permit may be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a 12 month period, a fine of up to three hundred dollars (\$300.00) and the permit may be suspended for up to thirty (30) consecutive business days as determined by the Board of Health.

- (2) The Foxboro Board of Health shall provide notice of the intent to suspend a tobacco sales 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 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 Foxboro Board of Health after a hearing, may suspend the 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.
- (3) Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

L. 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.

M. ENFORCEMENT

Enforcement of this regulation shall be by the Board of Health of the Town of Foxboro or its designated agent(s).

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

N. SEVERABILITY:

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.

O. EFFECTIVE DATE:

This regulation shall take effect on January 1, 2003.