

**REGULATIONS AFFECTING SMOKING IN CERTAIN PLACES
AND YOUTH ACCESS TO TOBACCO**

SECTION I - PURPOSE

The Board of Health of the Town of Greenfield does hereby find that:

The Environmental Protection Agency (1993) has designated environmental tobacco smoke as a Class A carcinogen, for which there are no known safe levels of exposure. Conclusive evidence exists that tobacco smoke causes lung cancer, heart disease, negative birth outcomes, respiratory infection, decreased respiratory function, bronchi-constriction, and bronchi-spasm, allergies and irritations to the eyes nose and throat of both the smoker and nonsmoker exposed to secondhand smoke.

Accordingly, the Board of Health finds and declares that the purposes of this regulation are (1) to protect the public health and welfare by prohibiting smoking in public places and (2) to guarantee the right of non-smokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Further, the Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. A third purpose of this regulation is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

These regulations are adopted pursuant to Massachusetts General Laws Chapter 111, Section 31.

SECTION II - DEFINITIONS

The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

- A. "Adequate Ventilation" means an enclosed area that is separately vented and under a negative pressure environment sufficient to prevent tobacco smoke from entering all non-smoking areas in a building. The ventilation rate in a designated smoking area shall conform to the current American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) recommendations for a smoking lounge (ventilation rate of 60 cubic feet per minute (CFM) per person based on occupancy of no more than seven (7) people per 100 square feet of net occupied space). Particulate air cleaners or filtration systems are not considered adequate ventilation.
- B. "Board of Health" means the Board of Health of the Town of Greenfield.
- C. "Bar" means any free standing establishment which 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.

- D. "Bar area of a restaurant" means an area of a restaurant which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which revenues from the sale of food constitute 20% or less of the total revenues in that area. The number of seats in a bar area of a restaurant shall not exceed 25% of the establishment's total seating capacity.
- E. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- F. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services.
- G. "Employer" means any person, business, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
- H. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, doors, or windows, which extend from the floor to the ceiling including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- I. "Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conferences and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
- J. "Public Place" means an enclosed, indoor area when open to and used by the general public, including, but not limited to, the following facilities: licensed child-care locations; educational facilities; elevators accessible to the public; clinics and nursing homes; inns hotel and motel lobbies, stairwells, halls, entranceways, and public restrooms' libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; theaters; auditoriums; public transit facilities; and any rooms or halls when used for public meetings. A room or hall used for 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.

- K. "Restaurant" means coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and other eating establishments which gives or offers food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a "bar".
- L. "Retail Tobacco Store" means a retail store utilized for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- M. "Self Service Display" means self service distribution of tobacco products from which individual packages or cartons may be selected by the customer.
- N. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- O. "Smoking" means inhaling , exhaling, burning or carrying any lighted cigar, cigarette, or any other tobacco product.
- P. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
- Q. "Tobacco Vending Machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco products upon the insertion of coins, trade checks, or slugs.

SECTION III - PROHIBITION OF SMOKING IN PUBLIC PLACES

- A. Smoking shall be prohibited in all enclosed public places within the Town of Greenfield including, but not limited to, the following places:
 - 1. Restaurants.
 - 2. Retail stores and malls.
 - 3. Waiting rooms, hallways, wards and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
 - 4. Child care facilities.
 - 5. Municipal buildings.
 - 6. Schools (M.G.L. C.71 SEC. 2A).
 - 7. Elevators.
 - 8. Buses, taxicabs, and other means of public transit under the authority of the Town of Greenfield, and ticket, boarding, and waiting areas of public transit depots (including airports).
 - 9. Restrooms.

10. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys offices and other offices, banks, laundromats, haircutting establishments, hotels and motels, including 75% of hotel/motel guest rooms (see Sect. V-A-3).

11. Public areas of aquariums, galleries, libraries and museums.

12. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except where smoking is part of the stage production.

13. Sports arenas, auditoriums and conventions halls.

14. Every room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees, or agencies of the Town of Greenfield or any political subdivision of the State during such time as a public meeting is in progress, to extent such place is subject to the jurisdiction of the Town of Greenfield.

15. Lobbies, hallways and other common areas in multiple-unit commercial facilities.

16. Polling places.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment as a non-smoking establishment.

SECTION IV - WORKPLACE

A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, except as otherwise provided by Section IV-C and Section V of these regulations, but employers are not required to incur any expense to make structural or physical modifications.

B. Each employer having an enclosed place of employment located within the town of Greenfield shall adopt, implement, make known and maintain a written policy containing the following requirements:

Smoking shall be prohibited in all enclosed facilities within or controlled by a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

C. Each employer may specifically designate enclosed areas in which employees may smoke, provided, however, that non-smokers are not required to use and/or pass through that enclosed area. Hallways, elevators, entranceways, stairwells, restrooms and waiting areas in all the above facilities may not be designated as smoking areas. Designated smoking areas must be separately ventilated to the outdoors. Non-smoking areas of comparable size and capacity must be available and provide for those who do not wish to be exposed to tobacco smoke. Smoking areas must be conspicuously marked.

- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

SECTION V - WHERE SMOKING IS PERMITTED

- A. Notwithstanding any other provision of this regulation to the contrary, smoking may be permitted in the following places and/or circumstances:

1. Private residences, except when used as a child care facility.
2. Retail tobacco stores.
3. Restaurants, hotel and motel conference or meeting rooms and private and public assembly rooms while these places are being used for private functions and 25% of hotel and motel sleeping rooms designated as smoking rooms (See Section III-A-10).
4. Private or semiprivate rooms of nursing homes and long-term care facilities, occupied by one (1) or more patients, all of whom are smokers who have requested in writing on the facility admission form to be placed in rooms where smoking is permitted.
5. Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle.
6. Performers upon the stage, provided that smoking is part of a theatrical production.
7. Bar areas of restaurants which are enclosed and equipped with adequate ventilation as defined in Section II. Upon request by the Greenfield Board of Health the establishment shall provide proof of adequate ventilation, as defined in Section II, from a certified heating, ventilation and air conditioning engineer. The configuration of the restaurant shall not require non-smoking dining patrons to pass through any portion of the bar area of the restaurant. Signs indicating the non-smoking section shall be clearly, sufficiently and conspicuously posted in every non-smoking area.
8. Bars.

- B. Bars and Bar areas of restaurants that permit smoking must conspicuously post signage approved and supplied by the Board at the entrance prohibiting persons under eighteen (18) and advising patrons of the health hazards of environmental tobacco smoke.

- C. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment as described in this section may declare that entire establishment as a non-smoking establishment.

SECTION VI - POSTING OF SIGNS

- A. "No Smoking" signs 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)

shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is prohibited by this regulation by the owner, operator, manager or other person having control of such building or other place.

- B. Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SECTION VII - ENFORCEMENT

- A. Enforcement of this regulation shall be implemented by the Board of Health, its staff, or other officials who may be designated by the Board of Health.
- B. Any citizen who desires to do so, may file a complaint requesting enforcement of this regulation by the Board of Health.

SECTION VIII - VIOLATIONS AND PENALTIES

- A. Any person who smokes in a smoke-free area as specified in Sections III and IV shall be subject to a fine of twenty dollars (\$20) for each violation.
- B. Any proprietor(s) or other person(s) in charge of a public place or place of employment who fail(s) to comply with these regulations shall be subject to a fine of two hundred dollars (\$200) for each day a violation continues.

SECTION IX - OTHER APPLICABLE LAWS

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

SECTION X - TOBACCO SALES TO MINORS PROHIBITED

- A. Sales to Minors - In conformance with Massachusetts General Laws Chapter 270, Section 6, it is a violation of these regulations to sell a cigarette, chewing tobacco, snuff, or any tobacco in any of its forms to any person under the age of eighteen (18) or, not being his parent or guardian, to give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen (18).
- B. Posting of State Law - In conformance with Massachusetts General Laws, 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 cigarettes at retail. The notice shall be that notice provided by the Massachusetts Department of 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 cigarette package 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 4 feet or greater than 9 feet from the floor. For all other cash registers that sell cigarettes, a notice shall be attached which is no smaller than 9

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 less than 4 feet or more than 9 feet from the floor.

- C. Identification Required - No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining photographic identification establishing the purchaser's age as eighteen years or greater.
- D. Permit Required - After November 15, 1994, it shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid permit from the Board of Health for each location in which tobacco products are sold. The term of the permit shall be one year.
- E. Fee for Permit - The fee for a one year tobacco retailer's permit is twenty-five dollars (\$25).
- F. Non-transferability - A tobacco retail permit is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.
- G. Vending Machines - After November 15, 1994, cigarette vending machines or any other mechanical self-service device for the sale or distribution of tobacco products are prohibited.
- H. Out-of-Package Sales Prohibited - It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. Sale or distribution of cigarettes in any form other than an original factory-wrapped package is prohibited.
- I. Free Distribution/Free Samples Prohibited - No person or entity shall distribute without charge tobacco products in any public place or at any event open to the public.
- J. Self Service Displays Prohibited - Self service distribution of tobacco products, from which individual packages or cartons may be selected by the customer, are prohibited.
- K. Violations and penalties of Section X - A permit shall be suspended after notice and opportunity to be heard as follows:
 - 1. In the case of a first violation, the permit holder shall be notified in writing of penalties levied for further violations, including permit suspension.
 - 2. In the case of a second violation within a 24-month period, the permit holder shall be fined two hundred (\$200). The Board may waive the fine and require the offending retailer to appear before the Board to outline plans for compliance in the future.
 - 3. In the case of a third violation within a 24-month period, the permit shall be

suspended for three (3) days from the date of suspension.

4. In the case of fourth and subsequent violations within a 24-month period, the permit shall be suspended for thirty (30) days from the date of suspension.

5. The Board shall provide notice to the permit holder of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor 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's decision, and the reasons therefor, in writing. All tobacco products shall be removed from the premises upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

SECTION XI - VARIANCES

- A. The proprietor(s) of a public place may make written application to the Board of Health for a variance from these regulations which the Board of Health may grant to avoid manifest injustice or hardship, provided that the decision shall not conflict with the spirit of any minimum standard established by these regulations.
- B. Notice of a hearing upon an original application for a variance must be posted with the public notice of the Board of Health meeting at which it is to be considered.
- C. Variances may be granted for up to one year and extended for like periods upon submission of a renewal application.
- D. A copy of any variance granted under this section shall be maintained on the premises for which it is issued for public inspection and a notice of the variance posted at the entrance.

SECTION XII - SEVERABILITY

If any provision, clause, sentence or paragraph of this regulation or the application thereof shall be held invalid, such invalidity shall not affect the remaining provisions of this regulation.

SECTION XIII - EFFECTIVE DATE

Date adopted: September 16, 1994

Date amended: October 4, 1994

Publication Date: October 28, 1994

This regulation first became effective November 15, 1994

Date amended Sect. X, Part K: October 4, 1995

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Effective date of amendment: November 20, 1996

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“Time Limit” amendment (Sect. X, Pt. K) adopted: January 12, 1999
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Effective date of amendment: March 1, 1999

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