
Tobacco Regulations

ARTICLE 22...REGULATION AFFECTING SMOKING, YOUTH ACCESS TO TOBACCO, AND THE SALE, VENDING AND DISTRIBUTION OF TOBACCO. Amended 1/26/04, 9/13/04,3/13/06, and 1/29/07.

RATIONALE:

Without question, smoking cigarettes poses a serious and dangerous health risk. However, the danger is not limited to smokers. Environmental tobacco smoke (ETS) which includes both exhaled smoke and the sidestream smoke from a burning cigarette causes the death of 53,000 non-smoking Americans each year, according to the Massachusetts Department of Public Health. Environmental tobacco smoke is one of the most widespread and harmful indoor air pollutants. In 1993 the Environmental Protection Agency (EPA) classified ETS as a Class A carcinogen, joining a list which includes such substances as benzene and asbestos.

Scientific evidence suggests that no reasonable amount of ventilation will eliminate environmental tobacco smoke from an enclosed area. At the same time the EPA recognizes there is no safe level of exposure to Class A carcinogens. Therefore, environmental tobacco smoke must be eliminated from enclosed areas open to the public to remove the health risk.

22.1 **AUTHORITY:** These regulations are adopted pursuant to authority granted to the Board of Health under the Massachusetts General Laws (M.G.L.), Chapter 111, Section 31, and Massachusetts General Laws (M.G.L.), chapter 270, Section 22, to (1) protect the public health and welfare by prohibiting smoking in public places and (2) guarantee the right of non-smokers to breathe smoke-free air and (3) to reduce easy access to tobacco products by youths through strict enforcement of the state law prohibiting sales to minors, Massachusetts General Laws, Chapter 270, Section 6. Where there are differences between state and local law, the stricter law shall prevail.

22.2 **DEFINITIONS:** For the purpose of these regulations:

Bar: An area that is primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Business: Any sole proprietorship, partnership, 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.

Common Areas: An enclosed indoor area when open to and used by the general public, including, but not limited to, hallways, elevators, stairwells, restrooms and waiting areas. or hotel, motel conference, meeting room, or workplace which is sufficiently ventilated and separated from non-smoking areas, as approved by the Board of Health, to minimize the adverse impact on the non-smoking public.

Employee: Any individual who performs services for an employer in return for wages or profit.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including the town of Sharon or any agency thereof, which

regularly uses the services of two (2) or more employees.

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

Self service display: Any display of tobacco products, where an employee does not directly control distribution of the tobacco products.

Minor: A person under eighteen (18) years of age.

Nonsmoking Area: Any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.

Public Place: Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks (including ATMs), educational facilities, health facilities, hotel and motel lobbies, laundromats, licensed child care facilities, long-term care facilities, municipal buildings, nursing homes, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, waiting rooms, hallways, entranceways, public rest rooms, elevators accessible to the public, common areas in privately-owned buildings, and any clubs, rooms or halls when used for public meetings.

Restaurant: Any establishment serving food for consumption on the premises, including cafeterias in the workplace, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail Food Store: Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption.

Retail Store: Any establishment providing goods, articles, or personal services to the public.

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

Tobacco Paraphernalia: does not include cigarettes or smokeless products containing tobacco in any form. Tobacco paraphernalia means any device commonly used to smoke or facilitate smoking, inhaling or ingesting tobacco or any device commonly used to prepare tobacco for smoking, inhaling or ingesting. "Tobacco paraphernalia" includes such devices as pipes designed for smoking tobacco products, papers or rolling machines designed, manufactured, marketed or sold for use primarily as a wrapping or enclosure for tobacco which enables a person to roll tobacco into a smokeable cigarette."

Workplace: Any area within a structure or portion thereof at which one (1) or more employees perform services for their employer. It also includes employee lounges, rest rooms, conference rooms, hallways, stairways and entranceways.

22.3 PROHIBITION OF SMOKING IN PUBLIC PLACES:

A. Smoking shall be prohibited in all enclosed public places within the Town of Sharon including, but not limited to, the following places:

1. Restaurants
2. Outdoor areas where food and/or beverages are served or consumed.
3. Bars
4. Retail food stores.
5. Waiting rooms, hallways, wards and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, health

care providers' offices.

6. Child Care Facilities

a. Child care facilities licensed for 7 or more children.

b. In home based facilities licensed for fewer than 7 children, smoking shall be prohibited during child care activities in those rooms where children are served.

7. Municipal Buildings.

8. Schools.

9. Elevators.

10. Buses, taxicabs, and other means of public transit under the authority of the Town of Sharon, and ticket, boarding, and indoor waiting areas of public transit depots.

11. Rest rooms.

12. 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, professional and other offices, banks (including ATMs), laundromats, haircutting establishments, hotels, motels, and lodging houses.

13. Public areas of aquariums, galleries, libraries, and museums when open to the public.

14. 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.

15. Sports arenas, auditoriums and convention halls.

16. 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 or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the Town.

17. Polling places.

18. Municipal vehicles.

B. Workplace:

Sixty (60) days after the publication of a summary of this regulation, it shall be unlawful for any person to smoke in any workplace.

1. All individuals who work in Sharon are entitled to breathe clean, smoke-free air. Each employer shall, within two (2) months after publication of a summary of this regulation, establish and post a written policy governing smoking and file a copy with the Board of Health.

2. Any employee exposed to environmental tobacco smoke (ETS) because of poor ventilation or inadequate nonsmoking areas may object in writing to the employer. The employer shall respond in writing within twenty (20) working days. If after twenty (20) working days the employer has not attempted to resolve the objecting employee's complaint, a written complaint may be filed with the Board of Health.

22.4 WHERE SMOKING IS NOT REGULATED

A. The following areas shall not be subject to smoking restrictions:

1. Private residences

2. Retail tobacco stores, devoted exclusively to the sale of tobacco products.

3. Public assembly rooms in municipal buildings while these places are being used for private functions, and with the written permission of the Board of Health.

4. Hotel, motel, and lodging houses may designate no more than 50% of the rooms as smoking rooms; however, such facilities which have fewer than 75 rooms must have at least 30% of the rooms as non-smoking rooms.

5. 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.

B. 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.

22.5 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 regulated by this article, including a primary entrance doorway, by the owner, operator, manager, or other person having control of such building or other place.

B. A "No Smoking" sign at least 3" x 3" with 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 and conspicuously affixed to both rear passenger windows of every taxicab licensed in Sharon. Such sign shall state "It is illegal to smoke in this vehicle" and "by order of M.G.L. Chapter 270, Section 22" and "by Article 22 of the Rules and Regulations of the Sharon Board of Health".

22.6 SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

A. Permit: No person, firm, corporation, establishment, or agency shall sell tobacco products within the Town of Sharon without a valid tobacco sales permit issued by the Board of Health. Tobacco sales permits are non-transferable. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually through the Board of Health, provided the licensee complies with the provisions of this article, at an annual fee determined by the Board of Health.

B. Tobacco Vending Machines: The sale of tobacco products by means of vending machines is prohibited.

C. Distribution of Tobacco Products: No person, firm, corporation, establishment or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Sharon. Such endeavors include, **but are not limited to, product giveaways, "two for one" or other promotions**, or distribution of a tobacco product as an incentive, prize, award or bonus in a game, contest, or tournament involving skill or chance

D. Sales to Minors: No retailer may sell cigarettes or smokeless tobacco or tobacco paraphernalia to any person younger than eighteen (18) years of age. Retailers must card anyone who appears to be 27 years of age or younger before selling him or her tobacco products, and the retailer must accept only a government-issued, photographic identification to verify a purchaser's age.

The sole exception is for parents and legal guardians who wish to give their child a tobacco product.

E. Self service displays: Effective thirty days from the publishing of a summary of this regulation, self-service tobacco product displays, whether they be free-standing or countertop, from which individual packages or cartons may be selected by the customer,

will be prohibited.

F. Sale and Distribution of Tobacco Products: No person or entity selling tobacco products shall allow anyone to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and state laws regarding sale of tobacco and signs a statement declaring they understand the law. A copy of which will be placed on file in the merchant store that he/she understands the regulations.

G. Sale and Display of Cigarette Rolling Papers: No person or business shall sell, or offer for sale, nor display any cigarette rolling papers in the Town of Sharon. Any person or business which violates this article shall be punished by a fine of \$25 for the first offense; \$50 for the second offense, \$100 for the third offense.

22.7 ENFORCEMENT

A. Violations of this regulation and penalties listed in Section 22.8 may be subject to non-criminal disposition, M.G.L., Chapter 40, Section 21D, by the Health Agent or designated Board of Health representative.

B. The Fire Department, Building Inspector, or Board of Health shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this article have been complied with.

22.8 VIOLATIONS AND PENALTIES

A. Any person having control of any premises or place in which smoking is prohibited who violates this section, in a manner other than by smoking in a place where smoking is prohibited or by selling tobacco products to minors or without a Tobacco Sales Permit, shall be punished, by a fine of \$100 for the first violation; \$200 for a second violation occurring within 2 years of the date of the first offense; and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If a person having control of any premises or place in which smoking is prohibited violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the department of public health, the local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the department of public health.

B. Persons, firms, corporations or agencies selling tobacco products to minors or selling tobacco products without a Tobacco Sales Permit shall be punished by a fine of \$200 per day for each day of such violation.

C. An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation.

D. Tobacco Sales to Minors

In conformance with Massachusetts General Laws, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff, tobacco paraphernalia or any tobacco in any of its forms, or to any person under the age of eighteen or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff, tobacco paraphernalia, or tobacco in any of its forms to any person under the age of eighteen be punished by a fine of one hundred dollars for the first offense, two hundred dollars for the second offense and three hundred dollars for any third or subsequent offense.

E. Suspension of Tobacco Sales Permit

The Board of Health may, after providing opportunity for hearing, suspend the Tobacco Sales Permit. Holders of a Tobacco Sales Permit may be subject to suspension of permit after the first offense. Suspension of the permit shall be 7 days for the first suspension, 14 days for the second suspension, and 30 days for the third and subsequent suspensions. In the event of suspension or revocation of such permit, holders shall also be subject to fines.

(1) The Board of Health shall give notice of the violation and hearing to the permit holder in writing.

(2) The notice shall specify the specific violations or which the permit is to be suspended and that the permit shall be suspended at the end of 10 days following service of such notice. The permit shall be suspended unless a written request for hearing is filed with the Board of Health by the permit holder within such 10-day period.

F. Revocation of Tobacco Sales Permit

(1) The Board of Health may, after providing opportunity for a hearing, order the revocation of a permit for:

- (a) Serious or repeated violations of the requirements of this regulation;
- (b) Interference with the Board of Health in the performance of its duty;
- (c) Keeping or submitting any misleading or false records or documents required by these regulations.

(2) The Board of Health shall give notice of the violation and hearing to the permit holder in writing.

(3) The notice shall specify reason(s) for which the permit is to be revoked and that the permit be revoked at the end of 10 days following service of such notice, unless a written request for hearing is filed with the Board of Health by permit holder within such 10 day period.

G. Hearing:

(1) The person or persons to whom any notice has been issued may request a hearing before the Board of Health. Such request shall be made in writing and shall be filed in the office of the Board of Health within 10 days after receipt of the notice.

(2) Upon receipt of such request the Board of Health shall set a time and place for such hearing and shall inform the petitioner thereof in writing.

(3) The hearing shall be commenced not later than 30 days after the day on which the request was filed. However, upon application of the petitioner the Board of Health may postpone the date of the hearing for a reasonable time beyond such 30-day period if in the judgment of the Board of Health the petitioner has submitted a good and sufficient reason for such postponement.

(4) At the hearing the petitioner shall be given an opportunity to be heard and to show why the notice should be modified or withdrawn.

(5) After the hearing, the Board of Health shall make a final decision based upon the complete hearing record, and shall inform the petitioner in writing of the decision. If the board of health sustains or modifies the notice, it shall be carried out within the time period allotted in the original notice or in the modification.

(6) Any person aggrieved by the final decision of the Board of Health may seek relief in a court of competent jurisdiction in the Commonwealth.

H. Embargo:

1. When a permit has been suspended, the holder of the permit shall, in the presence of a representative from the Board of Health, inventory all tobacco products for sale on the premises, package and seal the package.
2. When the suspension has been fulfilled, the holder of the permit shall, in the presence of a representative from the Board of Health, inventory all tobacco products prior to restocking.

22.9 NONRETALIATION

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this article.

22.10 SEVERABILITY

If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

22.11 EFFECTIVE DATE

This regulation will take effect thirty (30) days after the date of publication of a summary of the regulation.