



BOARD OF HEALTH

TOWN OF WESTBOROUGH MASSACHUSETTS

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RULES AND REGULATIONS AFFECTING SALES OF TOBACCO PRODUCTS TO MINORS AND EXPOSURE TO ENVIRONMENTAL TOBACCO SMOKE IN PUBLIC PLACES

WESTBOROUGH BOARD OF HEALTH

**Effective September 1, 1998
Amended October 16, 2001**

Section 1 - PURPOSE AND AUTHORITY

The Westborough Board of Health finds that tobacco use by minors and involuntary exposure to environmental tobacco smoke (ETS) poses a severe health risk. These regulations are made pursuant to Chapter III of the Massachusetts General Laws, Section 31, to prevent illegal sales of tobacco to minors and to minimize exposure of ETS in public places.

Section 2 - DEFINITIONS

As used in this regulation:

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 the building. The ventilation rate in a designated smoking area shall conform to the current American Society of Heating, Refrigeration and Air Conditioning Engineers (A.S.H.R.A.E.) recommendation for a smoking lounge, a ventilation rate of 30 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.

Bar Area of Restaurant means an area of a restaurant that is devoted to the serving of alcoholic beverages for consumption by guests or restaurant patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Bar/Lounge means any free standing establishment which is primarily dedicated to the serving of alcoholic beverages for the consumption of guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Business means 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 services are delivered.

Carton means any packaging that includes two or more packages of tobacco products or any single package of tobacco product combined with another product.

Employee means any individual who performs services for an employer in return for wages or profit or who performs services as a volunteer.

Enclosed area means a space between floor and ceiling which is enclosed on all sides by solid walls, exclusive of windows and doors, which extend from the floor to the ceiling.

Minor means a person less than eighteen (18) years of age.

Municipal Building means any building owned or leased by the Town of Westborough.

Municipal Vehicle means any vehicle owned or leased by the Town of Westborough.

Non-Profit Agency means any individual, partnership, corporation, or other entity that provides goods or services on a not-for-profit basis.

Public Place means an enclosed indoor area that is used by or otherwise accessible by the general public, excluding bar/lounges, and including, but not limited to, the following facilities:

- auditoriums,
- automobile sales rooms, dealerships, repair shops, and service stations;
- bank and automatic teller machine (ATM) lobbies;
- bleachers at sports fields,
- bus(es),
- clinics and other health care facilities;
- clubs, rooms, and halls when used for public meetings or gatherings;
- common areas of apartment buildings and condominiums;
- elevators accessible to the public;
- game arcades,
- gasoline stations,
- grocery stores, supermarkets, and convenience stores;
- halls and rooms used for public meetings or gatherings;
- hallways accessible to the public;
- hair salons and cosmetology establishments;
- health and fitness centers;
- indoor sports arenas,
- indoor stairwells accessible to the public;
- laundromats,
- libraries,
- licensed child care locations, including child care homes;
- municipal buildings,
- museums and galleries;
- nursing homes,
- places of public worship,
- public bathing beaches,
- public rest rooms,
- retail food establishments,
- retail stores,
- schools and other educational facilities;
- theaters or other facilities used for a stage production, play, lecture, musical recital, or other similar performance, except when smoking is part of said performance;
- video rental stores,
- the area within fifteen (15) feet of an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen (15) foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product,
- the area within fifteen (15) feet of a walk-up, food service window and fifteen (15) feet of an outdoor table provided for eating purposes by the food service establishment.

Restaurant means any coffee shop, cafeteria, sandwich stand, private or school cafeteria, and any other eating establishment including bar areas of dining 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" as defined in these regulations.

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

Self-Serve Display means any device used to dispense any type of tobacco product to the consumer without the assistance of a store employee.

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

Tobacco Product includes but is not limited to cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or tobacco in any of its forms.

Tobacco Vending Machines means any machine that dispenses tobacco products by means of coins, bills, slugs, trade slips, or swipe cards.

Workplace means the enclosed area where two (2) or more employees perform services for their employer, including but not limited to conference rooms, elevators, employee lounges, entrances, hallways, rest rooms and stairways.

Section 3 - TOBACCO SALES TO MINORS PROHIBITED

Sales to Minors

In conformance with Massachusetts General Laws Chapter 270, Section 6, the sale of cigarettes, chewing tobacco, snuff, or any tobacco in any of its forms to any person under the age of eighteen (18) shall be prohibited in the Town of Westborough. Similarly, it shall be prohibited in the Town of Westborough that anyone 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 (18).

Posting 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 tobacco products at retail. The notice to be posted shall be that notice provided by the Westborough Board of Health. Such notice shall be at least forty-eight (48) square inches and shall be posted at the cash register that 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 four (4) feet or higher than six (6) feet from the floor. All cash registers that sell tobacco products shall post

a notice no smaller than nine (9) square inches, as provided by the Westborough Board of 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 six (6) feet from the floor.

Sales Permit Required

No person or entity shall sell tobacco products at retail within the Town of Westborough without applying for and receiving a tobacco sales permit issued by the Board of Health.

The fee for this permit is **\$20.00**, renewable annually on or before December 31st.

The tobacco sales permit shall not be issued until the applicant reads the Board of Health regulations and MGL Ch270 s. 6 and 7 regarding the sale of tobacco. The applicant shall then sign a statement on the application stating that she/he has read and will uphold the regulations. It shall be the responsibility of the licensee to instruct all employees on the sale of tobacco products to minors.

The tobacco sales permit must be displayed no higher than six (6) feet no lower than four (4) feet, in clear and unobstructed view, behind the cash register receiving the highest volume of tobacco product sales.

Identification Required

No retailer may sell cigarettes, smokeless tobacco, or any other tobacco products to any person younger than eighteen (18) years of age. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 18 years of age. No such verification is required for any person over the age of twenty-six (26).

Individual Cigarette Sales

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

Free Distribution/Sampling

The free distribution or sampling of tobacco products is prohibited in the Town of Westborough.

Vending Machine/Self-service Displays

Any person or entity within the Town of Westborough may only sell tobacco products in a direct face-to-face exchange between retailer and the consumer. Methods of sale which are not permitted include, but are not limited to, vending machines and self-service displays.

Penalties

The penalty for selling without a valid permit shall be \$300.00.

In the case of the first violation of Section 3, the permit holder shall be fined one hundred dollars (\$100.00).

In the case of the second violation of Section 3 within a twelve (12) month period, the permit holder shall be fined two hundred dollars (\$200.00) and the permit shall be suspended for seven (7) consecutive days.

In the case of three or more violations of Section 3 within a twelve (12) month period, the permit holder shall be fined three hundred dollars (\$300.00) and the permit shall be revoked.

The Board of Health shall provide written notice to the permit holder of the intent to suspend or revoke a tobacco sales permit. The notice shall contain the reasons for the suspension or revocation and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of notice. The permit holder shall have an opportunity to be heard and shall be notified of the Board of Health's decision and reasons in writing.

All tobacco products shall be removed from the premises upon suspension of the tobacco sales permit. Failure to remove shall constitute a separate violation of this section and shall be punishable by a fine of one hundred dollars (\$100.00) per business day.

Section 4 - PROHIBITION OF SMOKING IN PUBLIC PLACES

Smoking or the use of any tobacco product is prohibited in all public places within the Town of Westborough.

It shall be unlawful for any owner, manager or person in charge of a public place covered by these regulations, to permit or for his other agent or designee to permit any violation of this regulation.

The owner, operator, manager, or person in charge of any public place shall prevent smoking in areas by requiring patrons or others who may be smoking to refrain from smoking or to leave the premises and to use any legal means which may be appropriate and reasonable to enforce this regulation.

Board of Health agents may, upon witnessing a person in possession of a burning tobacco product in a nonsmoking area of a public place, issue a fine of \$100.00 to that person.

In the case of the first violation of Section 4, the owner, manager or person in charge shall be fined one hundred dollars (\$100.00). In the case of the second violation of section 4 within a twelve (12) month period, the owner, manager, or person in charge shall be fined two hundred dollars (\$200.00). In the case of three or more violations of

section 4 within a twelve (12) month period, the owner, manager or person in charge shall be fined three hundred dollars (\$300.00) for each violation.

Section 5 - PROHIBITION OF SMOKING IN RESTAURANTS

Smoking in restaurants, including bar areas of restaurants, shall at the owner's option be prohibited or limited to a single designated smoking room or area which is enclosed and equipped with adequate ventilation, as defined in Section 2. Upon request from the Board of Health, a proprietor of a restaurant containing a designated smoking area, shall provide proof of adequate ventilation, as defined in Section 2, from a certified heating, ventilation and air-conditioning engineer or equally qualified professional to the Board of Health.

The number of seats in the designated smoking area shall not exceed 25% of the total seating capacity of the establishment.

Any establishment that contains an area where smoking is permitted must conspicuously post a sign identifying smoking and non-smoking areas. The sign shall measure eight (8) by ten (10) inches and shall be obtained from the Westborough Board of Health.

The configuration of establishment shall not require non-smoking dining patrons to pass through any portion of a designated smoking area.

Restaurant establishment staff (including, but not limited to, waiters, waitresses, hostesses, cashiers) shall not be required to serve patrons in smoking rooms. Restaurant staff may voluntarily serve in designated smoking areas.

Employees of a restaurant that contains a designated smoking area shall have the right to choose not to work in a designated smoking area.

The owner, operator, manager, or person in charge of any restaurant shall prevent smoking in non-smoking areas by requiring patrons or others who may be smoking in a non-smoking area to refrain from smoking or to leave the premises and to use any legal means which may be appropriate and reasonable to enforce this regulation.

In the case of the first violation of Section 5, the owner, manager or person in charge shall be fined one hundred dollars (\$100.00). In the case of the second violation of Section 5 within a twelve (12) month period, the owner, manager or person in charge shall be fined two hundred dollars (\$200.00). In the case of three or more violations of Section 5 within a twelve (12) month period, the owner, manager or person in charge shall be fined three hundred dollars (\$300.00). In lieu of a fine the Board of Health may suspend or revoke the food establishment permit.

The Board of Health shall provide written notice to the permit holder of the intent to suspend or revoke a food establishment permit. The notice shall contain the reasons for the suspension or revocation and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of notice. The

permit holder shall have an opportunity to be heard and shall be notified of the Board of Health's decision and reasons in writing.

This section shall not apply to an entire restaurant 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.

Section 6 - PROHIBITION OF SMOKING IN THE WORKPLACE

Smoking in workplaces shall at the owners option be prohibited or limited to a single designated smoking room which is enclosed and equipped with adequate ventilation, as defined in Section 2. Upon request from the Board of Health, a proprietor of a workplace containing a designated smoking area, shall provide proof of adequate ventilation, as defined in Section 2, from a certified heating, ventilation, and air-conditioning engineer.

Smoking is prohibited in all municipal vehicles when occupied by at least one (1) non-smoker.

It shall be unlawful for any owner, operator, manager, or person in charge of any workplace to permit, or for his or her agent or designee to permit, a violation of this regulation.

In the case of the first violation of Section 6, the owner, manager or person in charge shall be fined one hundred dollars (\$100.00). In the case of the second violation of Section 6 within a twelve (12) month period, the owner, manager or person in charge shall be fined two hundred dollars (\$200.00). In the case of three or more violations of Section 6 within a twelve (12) month period, the owner, manager or person in charge shall be fined three hundred dollars (\$300.00) for each violation.

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.

Section 7 - VARIANCES

The Board of Health may vary any provision of these regulations with respect to any particular case, when in its opinion, (1) the enforcement thereof would do manifest injustice, and (2) the applicant has proved that the same degree of protection can be achieved without strict application of the particular provision. All variances shall be considered at a hearing by the Board of Health.

EFFECTIVE DATE

These regulations shall be effective as of September 1, 1998.
Amended October 16, 2001.

Section 8 - INSPECTIONS / ENFORCEMENT

The Board of Health may enforce this regulation through periodic inspections conducted by the Board of Health or its enforcement officer(s) or designee(s). Inspections may be conducted each quarter or more frequently at the discretion of the Board of Health.

Jane Whitney
Chairman

Dr. Donald Cutone
Member

Donna Harris
Member

October 16, 2001
Board of Health
Westborough, Massachusetts