

ARTICLE 83

NO SMOKING IN PUBLIC PLACES

- a. It is hereby declared that smoking in public places is a public nuisance, dangerous and hazardous to the public health, and violates the rights of non-smokers to breathe air which is free of smoke contamination.
- b. As used herein, "Smoking" shall include carrying a lighted cigarette, cigar, pipe or other tobacco product.
- c. No person shall smoke in any elevator accessible to the public.
- d. No person shall smoke nor shall any person, employee, or other person having control of the premises upon which smoking is prohibited by this regulation, or the agent or designee of such person, permit a person to smoke in any room to which the public is invited or in which the public is permitted, including, but not limited to, any restaurant, health care facility, classroom, lecture hall, theater, motion picture theater, opera house, concert hall, library, auditorium, school, retail store, reception area, restroom or lavatory, waiting room, or public area of a bank, but not including any private residence or other place mentioned in subsection (e) nor any party, beano game, social reception, or fraternal or veteran's organization.
- e. Smoking is permitted in the bar area of a restaurant, provided that 1) the bar area shall not include any common area of the premises to which any patron seated in the non-smoking area may need access, including but not limited to waiting areas, restrooms, and access routes thereto; 2) the perimeter of a bar area of a restaurant in which smoking is permitted shall be separated by a floor -to-ceiling physical barrier; 3) the bar area of the restaurant shall be marked with signs that warn patrons of the dangers of exposure to secondhand smoke; and 4) no person under the age of eighteen (18) years old is permitted to enter the bar area of the restaurant.

This prohibition does not apply in cases in which an entire room or hall is used for a private social function and not by the proprietor or person in charge of the restaurant.

In addition to the remedies provided by subsections (h) and (i), the Director of Public Health or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

Nothing in this subsection shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

f.

(1) Except as provided in paragraph (2) no person shall smoke in any room 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, conference rooms, and hallways, but not including any private residence unless it is used as a child care or health care facility, or any other place mentioned in subsection (e).

(2) At the written request of one or more employees, an employer may (but is not required to) make other reasonable accommodations to smoking employees, including provision of a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for non-smokers. Upon request in writing, an employer shall provide a copy in writing of its smoking policy under this paragraph, including any designated smoking areas or other accommodation for smoking employees, to any employee, prospective employee, and the Director of Public Health. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Director who may modify it in any manner to carry out the purpose of this section. In any dispute arising from such a smoking policy, the health concerns of non-smokers shall be given precedence.

(3) The Director of Public Health shall enforce this subsection and subsection (d), and for this purpose shall have the assistance of the Town Administrator, Town Counsel and the Police and Building Department. In addition to the remedies provided by subsections (h) and (i), the Director or any person aggrieved by any violation of this subsection or subsection (d) may apply for injunctive relief to enforce said provision in any court with jurisdiction. This does not apply to small businesses which occupy only fifteen hundred (1,500) square feet of office space and where one hundred (100) percent of the employees have no objection.

g. Every person having control of premises upon which smoking is prohibited by this article or his or her agent or designee, shall conspicuously display upon the premises a sign reading "Smoking Prohibited by Law".

h. It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by this ordinance to knowingly permit a violation of this article. A person shall be held to have knowingly permitted a violation of this article if a visitor to his or her premises observes one or more people smoking (other than in properly designated smoking areas) on three successive visits. Any licenses issued by the Town to such person shall be subject to suspension for up to fifteen (15) days for a single violation of this subsection, and shall be subject to suspension for up to one year, or to revocation, for any successive violation.

i. Any person who knowingly violates any provision of the Article, or who smokes in an area in which a "Smoking Prohibited by Law" notice is conspicuously posted as required by subsection (h) of this article shall be subject to a fine in an amount of one hundred dollars (\$100) for the first offense, two hundred (\$200) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. All violations will be written against the establishment.

- j. If any section, subsection, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.