

CHAPTER XIX
TOBACCO CONTROL REGULATIONS
Natick Board of Health

REGULATIONS AFFECTING SMOKING IN CERTAIN PLACES AND YOUTH ACCESS TO TOBACCO

SECTION I – PURPOSE AND AUTHORITY

The Board of Health does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in nonsmokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing secondhand smoke include 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.

Accordingly, the Board of Health finds and declares that the purpose of these regulations are (1) to protect the public health and welfare by prohibiting smoking in public places and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognized 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. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products. Therefore, another purpose of this ordinance 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 under authority of Section 31 of Chapter 111 of the Massachusetts General Laws.

SECTION II – DEFINITIONS

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

- A. "Bar" means an area, 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. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.
- B. "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 legal, medical, dental, engineering, architectural or other professional services are delivered.

- C. “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 for a non-profit entity.
- D. “Employer” means any person, partnership, corporation, including a municipal corporation or non-profit entity, who employs the services of one or more individual persons.
- E. “Enclosed area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) 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.
- F. “Minor” means a person less than eighteen years of age.
- G. “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, conference and classrooms, employee cafeterias and hallways. A private residence is not a “Place of employment” unless it is used as a childcare or health care facility.
- H. “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a “public place”.
- I. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment 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 cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in Section A.
- J. “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.
- K. “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 involved the exchange of money.
- L. “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.
- M. “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 assemblage either to engage in physical exercise, participate in athletic competition, or witness sports events.

- N. "Tobacco Vending Machine" means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon the insertion of coins, trade checks or slugs.
- O. "Tobacco Product" means cigarettes, cigars, pipe, pouch, spit, chew, snuff or tobacco in any of its forms.
- P. "Self-Service Display" means a display of tobacco products from which any tobacco product may be selected by a customer without assistance from an employee or store personnel."

SECTION III – PROHIBITION OF SMOKING IN PUBLIC PLACES

(Reserved for future use)

SECTION IV – WORKPLACE

(Reserved for future use)

SECTION V – WHERE SMOKING IS NOT REGULATED

(Reserved for future use)

SECTION VI – POSTING OF SIGNS

- A. "No Smoking" signs or 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, by the owner, operator, manager or other person having control of such building or other place.
- B. (Reserved for future use)

SECTION VII – ENFORCEMENT

- A. Enforcement of this article shall be implemented by the Board of Health.
- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Board of Health.
- C. The Fire Department or the 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.
- D. Any owner, manager, operator or employee of any establishment regulated by this article may inform persons violating this article of the appropriate provisions thereof.
- E. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

SECTION VIII – VIOLATIONS AND PENALTIES

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
- C. Any person who violates any provision of this article shall be guilty of an infraction, punishable by:
 - a. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - b. A fine not exceeding two hundred dollars (\$200) for a second violation of this article within one (1) year.
 - c. A fine not exceeding five hundred dollars (\$500) for each additional violation of this article within one (1) year.

SECTION IX – NONRETALIATION

(Reserved for future use)

SECTION X – PUBLIC EDUCATION

The Board of Health shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

SECTION XI – OTHER APPLICABLE LAWS

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

SECTION XII – TOBACCO SALES TO MINORS PROHIBITED

Sales to Minors – In conformance with Massachusetts General Laws Chapter 270, Section 6, whoever sells 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, gives a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen (18), shall be punished by:

1. For the first offense a fine of one hundred dollars (\$100.00) and the permit holder or agent must attend a Merchant Education class provided by the Board of Health.
2. For the second offense two hundred dollars (\$200.00) and employees engaged in the sale of tobacco at the establishment must attend a Merchant Education class provided by the Natick Board of Health.
3. For a third or any subsequent offense a fine of three hundred dollars (\$300.00) and a hearing before the Natick Board of Health.

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 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 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 cash registers that sell cigarettes, a notice shall be attached, which is no smaller than 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 clerk 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.

The Board of Health or its agents shall enforce this regulation.

Whoever violates this provision shall be punished by a fine of fifty dollars (\$50). 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).

Identification Required - No retailer shall sell or permit to be sold any tobacco products to an individual appearing to be under the age of twenty-seven (27) without requesting and examining photographic identification (limited to government issued) establishing the purchaser's age as eighteen years or greater.

Permit Required – After April 1, 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 if the licensee complies with the provisions of this chapter.

Revocation of Permit – A permit shall be suspended after notice and opportunity to be heard before the Board of Health to determine the disposition of the complaint:

1. In the case of a first violation, the licensee shall be fined two hundred dollars (\$200) and shall be notified in writing of penalties levied for further violations.
2. In the case of a second violation, the licensee shall be fined five hundred dollars (\$500) and the permit shall be suspended for not less than ninety consecutive business days nor more than six months.
3. In the case of three or more violations, the licensee shall be fined one thousand dollars (\$1000) and the permit shall be revoked not less than nine months nor more than eighteen months from the date of revocation.

Fee for Permit – The fee for a one-year tobacco retailer’s permit is twenty-five dollars (\$25) for each tobacco retail location.

Non-transferability – A tobacco retail permit is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.

- H. **Vending Machines** – After May 1, 2001, tobacco sales by means of a vending machine, as defined by this regulation, shall be prohibited. All tobacco sales shall be through a face-to-face exchange between customer and clerk.
- I. **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 tobacco products in any form other than an original factory-wrapped package is prohibited.
- J. **Free Distribution/Free Samples Prohibited** – No person or entity shall knowingly distribute or furnish without charge, or cause to be furnished or distributed without charge, cigarettes or other tobacco products in any public place or at any event open to the public, except in retail tobacco stores.
- K. **Reduced Pricing** – Reserved for future use.
- L. **Self-Service** – After May 1, 2001, any self-service display as defined in this regulation, shall be prohibited.
- M. **Sales by Persons Under Age 18** – Reserved for future use.
- N. **Enforcement** – Violations of Sections H, I, J, and L of this ordinance are subject to a fine of not less than fifty dollars (\$50) or more than two hundred dollars (\$200).

SECTION XIII - RESTRICTIONS ON ADVERTISING AND PROMOTION OF TOBACCO

Prohibition of Advertising of Tobacco Products on Public Transportation Vehicles - No person shall display on or in any bus, taxicab licensed or garaged within the Town of Natick or any other vehicle used for public transportation within the Town of Natick an advertisement for cigarettes, cigars, pipe tobacco, spit tobacco or other tobacco product. Anyone violating this section shall be subject to a civil fine of one hundred dollars (\$100) per day per vehicle.

SECTION XIV - SEVERABILITY

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

SECTION XV – EFFECTIVE DATE:

These regulations shall be effective on April 1, 1994.

Adopted March 21, 1994

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Amended April 11, 1994.

Summary of amendments published in the Middlesex News, April 20, 1994.

Amended June 6, 1994.

Summary of Amendments published in the Middlesex News, June 17, 1994

Amended January 22, 2001.

Summary of Amendments published in the Natick Tab, February 6, 2001

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