



TOWN OF YARMOUTH

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BOARD OF HEALTH TOBACCO CONTROL REGULATION

SECTION I - FINDINGS AND PURPOSE

The 1986 Surgeon General's Report on "The Health Consequences of Involuntary Smoking" clearly documents that nonsmokers are placed at risk for developing disease as a result of exposure to environmental tobacco smoke or secondhand smoke. In 1993, the Environmental Protection Agency classified environmental tobacco smoke as a known human carcinogen. 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.

Exposure to environmental tobacco smoke presents a serious and substantial public health risk. Of particular concern is the workplace environment of nonsmokers, where they may be subjected to sustained, involuntary exposure. At special risk are children, the elderly, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

Studies have shown that vending machines afford an opportunity for unauthorized sale of cigarettes to minors. Evidence further demonstrates that tobacco is extremely addictive. Approximately 80% of all smokers begin smoking before age eighteen and more than 3,000 young people begin smoking every day in this nation.

The Cape Cod Regional Tobacco Control Program Advisory Panel (comprised of representatives of the Boards of Health from the towns of Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Nantucket, Orleans, Provincetown, Sandwich, Truro, Wareham, Wellfleet and Yarmouth) urges all public places and workplaces to become voluntarily smokefree before May 1, 1996.

This regulation is presented as a model regulation to be adopted uniformly to the extent possible by the 17 Boards of Health comprising the Cape Cod Regional Tobacco Control Program. The intent of a uniform regulation is to minimize any potential economic impact to the business community which might result from varying regulations throughout the region. These regulations are proposed as an integral part of efforts by the Cape Cod Regional Tobacco Control Program and other community programs to educate our communities about the dangers of tobacco use and secondhand smoke.

SECTION II - AUTHORITY

The Town of Yarmouth pursuant to Massachusetts General Laws Chapter 111, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

SECTION III - DEFINITIONS

- a. Employee - A person who performs services for wages or other consideration.
- b. Employer - A person, partnership, association, corporation, trust, or other organized group, including the County of Barnstable and any department or agency thereof, and any municipal entity, which utilizes the services of two (2) or more employees.
- c. Minor - A person under eighteen years of age.
- d. Public Place - An enclosed, indoor area that is open to and used by the general public, including but not limited to the following facilities: licensed child care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, lobbies and entranceways accessible to the public; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels and motels; public restrooms; laundromats; hair salons, barbershops; libraries; municipal buildings; museums; retail food establishments; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and, any function rooms/halls when used for public meetings or public social functions. A function room/hall 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, shall not be construed as a public place.
- e. Smoking - The lighting of, or having in one's possession any lighted cigarette, cigar, pipe, or other tobacco product.
- f. Tobacco - Cigarettes, cigars, snuff, chewing tobacco or tobacco in any of its forms.
- g. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco products by self-service, with or without the assistance of a clerk or operator.
- k. Workplace - Any area within a structure or portion thereof in which two (2) or more employees perform services for their employer. It also includes employee lounges, restrooms, dining areas, conference rooms, hallways, stairways, and entranceways.

SECTION IV - PROHIBITION OF SMOKING IN PUBLIC PLACES

- * Smoking shall be prohibited in all public places (as defined in Section III.d.) as of June 1, 1996.

SECTION V - PROHIBITION OF VENDING MACHINES

- * No vending machines for dispensing cigarettes or other tobacco products are allowed in the Town of Yarmouth.

SECTION VI - WORKPLACE

- A. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas such described in Section VI, B.

B. Each employer may specifically designate enclosed areas in which employees may smoke, provided, however, that comparable nonsmoking areas of adequate size and capacity are available and provided, further, that physical barriers and separate ventilation systems, vented directly to the outside, are used to segregate smoking areas from nonsmoking areas. Smoking areas shall be such that smoke is not able to seep into nonsmoking areas. Common areas, including hallways, elevators, entranceways, stairwells, restrooms, and waiting areas listed in III.d., may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.

C. Each person having control of premises upon which smoking is prohibited by this regulation shall not knowingly permit a violation of this regulation.

SECTION VII - POSTING

Every person having control of a premises where smoking is prohibited by this regulation, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be deemed as compliance.

SECTION VIII - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - To monitor compliance of the sale of tobacco products, permits will be issued. No person, firm, corporation, establishment, or agency, shall sell tobacco products within the Town of Yarmouth without a valid tobacco sales permit issued by the Board of Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits must be renewed annually at a time and fee set forth by the Board of Health.

b. Sales to Minors - In conformance with Massachusetts General Laws, Chapter 270, Section 6, no person, firm, corporation, establishment, or agency, shall sell tobacco products to a minor. Each employee working in an establishment licensed to sell tobacco products shall be required to read the Board of Health regulations and State Laws regarding the sale of tobacco and sign a form indicating that such regulations/laws have been read and understood, a copy of which must be placed on file in the office of the employer and retained. Such signed forms must be made available for inspection, during the license holder's normal business hours, upon request of an agent of the Board of Health.

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 Yarmouth. Such endeavors include, but are not limited to, product "giveaways," or distribution of a tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals, or attached to packaging. All distributors/retailers of tobacco products or tobacco merchandise must require that, if a customer appears to possibly be under 25 years of age, the customer present a valid State issued picture identification card or drivers license with appropriate photograph to confirm that the customer is of a legal age to purchase the tobacco product.

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d. Restrictions on Self-Service (Freestanding) Displays - It has been shown that self-service (freestanding) tobacco displays encourage illegal activity by youth and provide youth with easier access to tobacco products. Therefore, tobacco products on freestanding displays in retail locations, where a tobacco product may be selected by the customer, shall be restricted in the following manner: (1) self-service (freestanding) displays shall be permitted only on a checkout counter/register, in full view of a clerk, and at a distance of no more than five (5) feet from the clerk; (2) no floor displays shall be permitted; (3) if a checkout counter/register is not staffed, the tobacco products must be in an enclosed, locked case or otherwise inaccessible for self-service.

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SECTION IX - VIOLATIONS AND PENALTIES

a. Violations of this smoking regulation will be subjected to the provisions of the Regulation of the Town of Yarmouth regarding non-criminal disposition, according to the code of Yarmouth.

b. Any person who knowingly violates any provision of this regulation, or who smokes in a municipal area subject to regulation, in which a "Smoking Prohibited By Law" sign or its equivalent is conspicuously displayed, shall be punished by a fine of up to \$50 for each offense.

c. Any proprietor(s) or other person(s) in charge of a public place or workplace, including municipal entities, who fail(s) to comply with these regulations shall be subject to the following actions for each offense:

1. a warning shall be issued for a first offense. A fine of one hundred dollars (\$100) may be issued for the second offense, two hundred dollars (\$200) for a third offense, three hundred dollars (\$300) for a fourth offense, and three hundred dollars (\$300) for any subsequent offense; and,

2. Following the second offense the Board of Health may, after a public hearing, suspend any license for that public place for a period of up to two days for each day of non-compliance or withhold renewal of license. Following a third offense, the Board of Health may suspend an existing permit/license for a period of time determined by the Board of Health until compliance is achieved.

d. 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 not more than \$300 per day for each day of such violation and/or suspension of the tobacco sales permit.

e. In addition to the remedies provided by IX-b, IX-c, and IX-d above, the Board of Health may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

SECTION X - 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 XI - OTHER APPLICABLE LAWS

a. The Board of Health or its enforcement officer(s) shall enforce this regulation. Any violation of these regulations may be enforced and punished by the provisions of the Code of Yarmouth Administrative Legislation, General Provisions, Section 1.1 et seq. non-criminal disposition.

b. Any citizen who desires to register a complaint of non-compliance under this regulation may do so by contacting the Health Department.

SECTION XIII - EFFECTIVE DATE

These regulations shall be effective as of July 1, 1996.
Publication date June 6, 1996 Register Newspaper

BOARD OF HEALTH:

Barrie Cliff
Barrie Cliff, Chairman

Ed Fettes
Ed Fettes, Vice Chairman

Robert Tilley
Robert Tilley, M.D., Clerk

Elizabeth Crane Sarnosky
Elizabeth Crane Sarnosky

Robert Brown
Robert Brown

Board of Health Meeting - May 6, 1996