

## ENVIRONMENTAL TOBACCO SMOKE REGULATION

### 1. Statement of Purpose

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter E.T.S.], which includes both exhaled smoke and the side stream smoke from burning cigarettes, has been designated by the Environmental Protection Agency (1993) to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure; and whereas numerous studies have shown that ETS is harmful to human health, now, therefore, the Board of Health of the Town of TOWNSEND recognizes the right of those who wish to breathe smoke-free air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in certain public places.

### 2. Authority

Through broadly drafted statutes, the Commonwealth of Massachusetts delegated its authority to regulate public health at the local level to Boards of Health. See e.g. Mass Gen. L. ch. 111, sec. 31 (directing Boards of Health to enact "reasonable health regulations"); Mass Gen. L. ch 111, sec 122 (directing Boards of Health to "examine into all nuisances, sources of filth and causes of sickness"). As a result of that extensive grant of authority, Boards have the authority to regulate all areas of public health, including but not limited to, the ability to regulate environmental tobacco smoke [hereinafter E.T.S.]. Moreover, Boards of Health have broad authority to enforce their regulations. Boards may levy specified fines and collect them through criminal proceedings in district court, or if authorized by town meeting, through the less arduous non-criminal method of disposition. In addition, Boards of Health may seek and obtain injunctive orders restraining violations of their E.T.S. regulations.

### 3. Definitions:

For the purposes of this regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

**Board:** The Board of Health of the Town of TOWNSEND.

**Bar/Lounge:** Any free standing establishment whose business 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.

**Bar Area of a Restaurant:** 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.

**Employee:** Any individual person who performs services for an employer.

**Employer:** An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the Town of TOWNSEND or any agency thereof, which regularly utilizes the services of one (1) or more individual employees.

**Health Care Facility:** Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

**Municipal Buildings:** Any building or facility owned, operated, or leased by the town, including school buildings, school grounds or municipal grounds.

**Municipal Vehicle:** Any car, truck, bus or other vehicle owned, operated, or leased by the town.

**Person:** Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

**Proper Ventilation:**

**Properly Ventilated Smoking Area:** A Properly Ventilated Area is an enclosed volume separately ventilated directly to the outside and which does not allow any air to re-circulate through the building ventilation system. The Properly Ventilated Area shall be under negative pressure relative to the remainder of the establishment so as to prevent air from escaping into other areas which may be accessed by non-smokers. An area so constructed and operated is considered to have Proper Ventilation.

**Public Place:** Any building or facility owned or operated by the town, including school, school grounds or municipal grounds; any indoor area open to the general public including, but not limited to libraries, museums, theaters, auditoriums, indoor sports arenas and/or recreational facilities, the lobbies of inns, hotels and motels, educational facilities, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public, licensed child-care locations; and any outdoor areas open to the general public including, but not limited to playgrounds, athletic fields and the Town Common. Public Place does not include sidewalks or roadways.

**Public Transportation Vehicle:** Any bus, taxi, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the town including indoor platforms by which such means of transportation may be accessed.

**Restaurant:** Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, or other eating establishment which gives or offers food for sale to the public, guests, or employees, as well as any kitchen in which food is prepared on the premises for serving elsewhere, including catering facilities and which is required to have a food service permit except that the term "restaurant" shall not include "bar" as defined in these regulations..

**Retail Store:** Any establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, any goods, wares, merchandise, articles or other things, including supermarkets and grocery stores. "Retail store" shall not include "restaurant" as defined herein.

**Seating capacity:** The capacity designated on the occupancy permit of a food service establishment.

**Smoking:** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other lighted tobacco product in any form.

**Sports Arena:** Any sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar recreational facilities where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Town:** The Town of TOWNSEND.

**Workplace:** Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer but not including the personal residence of the employer.

#### **4. Ban on Smoking in Public Places**

- 4.1. Smoking Prohibited:** No person shall smoke nor shall any person, employer, 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 of the following places as defined herein: health care facilities, municipal buildings, municipal vehicles, public places, public transportation vehicles, restaurants and retail stores except as otherwise provided in Section 7 of this regulation.
- 4.2.** No person shall smoke in any place in which a sign conforming to the requirements of Section 5 of this regulation is posted.
- 4.3.** No person shall remove a sign posted under the authority of Section 5 of this regulation.
- 4.4. Persons Under 18 Not Admitted to Designated Smoking Areas:**
  - 4.4.1.** No person owning or operating an establishment in which smoking is permitted by means of Section 7 of this regulation shall permit any person under eighteen (18) years of age to enter the Designated Smoking Area.
  - 4.4.2.** No person under eighteen (18) years of age shall enter into a Designated Smoking Area.

**5. Posting Notice of Prohibition:**

- 5.1. Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "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).
- 5.2. Every person having control of premises upon which smoking is allowed in a Designated Smoking Area as permitted by Section 7 of this regulation shall conspicuously display upon each entrance to the premises a sign notifying all who enter that smoking is permitted therein and that this smoking poses a hazard to their health.
- 5.3. Every person having control of premises upon which smoking is allowed in a Designated Smoking Area as permitted by Section 7 of this regulation shall conspicuously display upon each entrance to the Designated Smoking Area a sign stating that persons under eighteen (18) years of age are not permitted within.

**6. Reserved:**

**7. Exceptions:**

Notwithstanding the provisions of Section 4 of this regulation, smoking may be permitted in the following places and/or circumstances:

- 7.1. Private residences, except when used as a licensed child care facility or health care facility;
- 7.2. Hotel and motel rooms that are rented to guests that are designated as smoking rooms;
  - 7.2.1. No more than 25% of the total number of guestrooms may be designated as smoking rooms; and
  - 7.2.2. Non-Smoking rooms shall have the international No-Smoking logo permanently attached to the door as described in section 5 of this regulation.
  - 7.2.3. A Bar and the Bar area of a restaurant that is a Properly Ventilated Smoking Area as defined in Section 3 of this regulation.
    - 7.2.3.1. Three (3) months from the implementation date of these regulations, all Designated Smoking Areas shall have Proper Ventilation, as defined in Section 3 and the establishment owner shall have on record a ventilation plan by a certified Heating/Ventilation/Air-Conditioning Engineer or other professional that is approved by the Townsend Board of Health.
- 7.3. A facility owned and operated by a private club for the exclusive use of its members and their guests, except when used for an event open to the general public whether an admittance fee is charged or not.
- 7.4. Retail tobacco stores which are primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

## **8. Conflict with Other Laws or Regulations:**

Notwithstanding the provisions of the foregoing Paragraph E of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

## **9. Violations:**

Any person who violates this regulation shall be subject to a fine in an amount of one hundred dollars (\$100) for a first offense, two hundred dollars (\$200) for a second offense within a twelve (12) month period, and three hundred dollars (\$300) for a third or subsequent offense within a twelve (12) month period.

9.1. In lieu of a fine, the Board of Health may suspend or revoke the establishment's food service permit. The Board of Health shall provide written notice to the permit holder of the intent to suspend or revoke a food service 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 notification. 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.

## **10. Enforcement:**

10.1. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate enforcement.

10.2. Whoever violates any provision of this regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal disposition as provided in General Laws, Chapter 40, Section 21D, pursuant to §1-4.B, and of the Townsend General Bylaws Section XII, or by filing a criminal complaint at the appropriate venue.

Each day on which any violation exists shall be deemed to be a separate offense.

Penalty:       \$100 for the first offense  
                  \$200 for the second offense  
                  \$300 for the third offense

Enforcing Persons: Townsend Police Department,  
Townsend Board of Health and its agents.

10.3. Any fines imposed under the provisions of this regulation shall enure to the Town of TOWNSEND for such use as the town may direct.

## **11. Severability:**

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions being in force.

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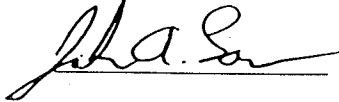
12. Effective Date:

These regulations shall be effective as of ~~May~~ 01, 1999.

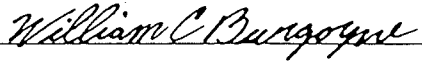
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Town of Townsend  
Date:

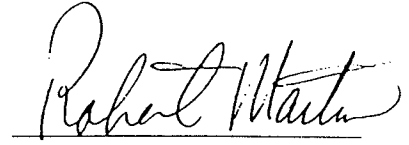
Board of Health Members



John Lord



William C. Burgoyne



Robert Martin