

## **Town of Norfolk Regulation Limiting Exposure to Environmental Tobacco Smoke in Public Places and Workplaces**

### **A. 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 ETS], which includes both exhaled smoke and the side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year (McGinnis JM, Foege W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212); and whereas the Ninth Report on Carcinogens of the Public Health Service's National Toxicology Program classified secondhand smoke as a known human carcinogen (U.S. DHHS, 2000) and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); now, therefore, the Board of Health of the Town of Norfolk recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in workplaces.

B. Authority: This regulation is promulgated under the authority granted to the Norfolk Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations."

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

**Bar:** An adult-only 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. Revenue generated from the serving of alcoholic beverages must be equal to or greater than eighty percent (80%) of the total combined revenue generated by the service of such beverages and food. Revenue figures to be considered as evidence for the purpose of this regulation are those used in calculating the meal tax amount required to be filed with the Massachusetts Department of Revenue for the preceding year.

**Board:** The Board of Health of the Norfolk.

**Buffer Zone:** An area within 50' of the exterior of any municipal building and 15' from the entrance ways of all other public places.

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

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

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

**Enclosed:** A space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

**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.

**Person:** Any individual, 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 business agents or designees of any of the foregoing.

**Public place:** Any facility owned, leased, operated or occupied by the municipality, including all buildings; schools and school grounds, any enclosed area open to the general public including, but not limited to, restaurants, bars, retail stores, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, hotel and motel conference/meeting rooms and public assembly rooms, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public, licensed child-care locations and all work places in the Town of Norfolk.

**Public Transportation Vehicle:** Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the Town of Norfolk including indoor platforms by which such means of transportation may be accessed.

**Retail Food Store:** Any establishment commonly known as a supermarket, grocery store, bakery or convenience store, or any other establishment in which the primary activity is the sale of food items to the public for off-premises consumption.

**Retail Store:** Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other things.

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

Town: The Town of Norfolk.

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.

**D. Posting Notice of Prohibition:**

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 provided by the Massachusetts Department of Public Health and available from the Norfolk Board of Health 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). Upon request, the Norfolk Board of Health will furnish these signs.

Penalty: In case of a first violation, a written warning will be issued. Subsequent offenses will result in a \$50.00 (fifty dollar) non-criminal fine.

**E. Smoking Prohibited:**

Smoking is prohibited in all public places and buffer zones as defined herein.

It shall be unlawful for any employer or other person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such person, to permit a violation of this regulation.

**F. Exceptions:**

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

1. Private residences, except those portions used as a licensed child care facility.

**G. Violations:**

Any employer, or his or her business agent, who violates any provision of this regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. It shall be the responsibility of the employer, or his or her business agent, to ensure compliance with all sections of this regulation.

In the case of a first violation, a fine of one hundred dollars (\$100.00), two hundred dollars (\$200) for a second offense within twelve months and three hundred dollars

(\$300) for a third or subsequent offense within twelve months from the current offense. A fourth or subsequent offense within twelve months from the current offense will result in the suspension of any Board of Health issued food permits.

**H. Enforcement:**

This regulation shall be enforced by the Board of Health and its designees.

One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate an investigation.

**I. Non-Criminal Disposition:**

Whoever violates any provision of this regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. Any fines imposed under the provisions of this regulation shall be paid to the Town of Norfolk for such use as the town may direct.

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 within 12 months of the date of the first violation
	\$300 for the third or subsequent offense within 12 months of the current violation, including the current violation

Enforcing Persons: Board of Health and its designees

**J. 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.

**K. 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.

**L. Effective Date:**

This regulation was voted on and approved on August 22, 2002 and shall take effect on January 1, 2003.

Members:

Thomas Gilbert, Chair \_\_\_\_\_

John Lavin, Clerk \_\_\_\_\_

Peter Chipman, Member \_\_\_\_\_

