

REGULATIONS GOVERNING THE SALE AND USE OF TOBACCO PRODUCTS IN HARWICH

Section I. Finding and Purpose

The 1986 Surgeon General's Report on "The Health Consequences of Involuntary Smoking" clearly documents that non-smokers are placed at increased risk for developing disease as a result of exposure to environmental tobacco smoke (ETS). In early 1993, the Environmental Protection Agency classified ETS as a known human carcinogen. There is no safe level of exposure to ETS. 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 non-smokers.

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

These Regulations will strengthen existing state laws designed to prevent the sale and distribution of tobacco products to persons under the age of 18 and restrict the ease of access to tobacco products by minors. 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 18 and more than 3,000 young people begin smoking every day in this nation.

Section II. Authority

The Town of Harwich pursuant to Massachusetts General Laws Chapter 111, Section 31, adopts these Regulations as reasonable health Regulations designed to protect and improve the health of the residents, visitors and persons employed with the Town of Harwich.

Section III. Definitions

- 3.1 Tobacco – Cigarettes, cigars, snuff or tobacco in any of its forms.
- 3.2 Smoking – The lighting of, or having in one's possession, any lighted cigarettes, cigar, pipe or other tobacco product.
- 3.3 Tobacco Vending Machine – A mechanical or electrical device which dispenses tobacco products.
- 3.4 Self-Service – Any tobacco display which allows self service.

- 3.5 Minor – A person under eighteen years of age.
- 3.6 Employer – Every for profit and not for profit business or corporation in Harwich including all municipal governmental bodies, agencies, boards and authorities with employees.
- 3.7 Employee – Any person who is employed by an employer in consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services.
- 3.8 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 entrance ways 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, food service establishments, indoor sports arenas, enclosed shopping malls, theaters, auditoriums, and public transit facilities shall be construed as a public place.
- 3.9 Workplace – An area within a structure or portion thereof at which persons perform services. It also includes employee lounges, restrooms, dining areas, conference rooms, hallways, stairways and entrance ways.

Section IV. Prohibition of Smoking in Public Places

As of July 1, 2000, all public places as defined in Section 3.8 shall be 100% non-smoking.

Section V. Prohibition of Vending Machines

No vending machines for dispensing cigarettes or tobacco products are allowed in the Town of Harwich.

Section VI. Workplace

- 6.1 Any private employer operating a workplace with more than two employees shall not allow smoking except in specially designated smoking areas such described in Section 6.2.
- 6.2 Each employer may specifically designate enclosed separate areas in which employees may smoke. Physical barriers and separate ventilation systems, vented directly to the outside, shall be used to segregate smoking areas from non-smoking areas. Smoking areas

shall be such that smoke is not able to seep into non-smoking areas. Common areas, including hallways, elevators, entranceways, stairwells, restrooms, and waiting areas may not be designated as smoking areas.

- 6.3 Each person having control of the premises upon which smoking is prohibited or controlled by this Regulation shall not permit a violation of this Regulation.

Section VII. Posting

“Smoking” or “No Smoking” signs or symbols shall be prominently posted and properly maintained where smoking is regulated by this act, by the owner, operator, manager, employer or other persons having control of such indoor areas.

Section VIII. Sale and Distribution of Tobacco Products

- 8.1 Permit – To monitor compliance of the sale of tobacco products, permits will be required as issued by the Harwich Board of Health. No person, firm, corporation, establishment, or agency shall sell tobacco products within the Town of Harwich 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.
- 8.2 Sales to Minors – No person, firm, corporation, establishment or agency, shall sell tobacco products to a minor. Each employee shall be required to read the Board of Health Regulations and Massachusetts General Laws, Chapter 270 Section 6 and Section 7 regarding the sale of tobacco.
- 8.3 Self-Service Displays – Displays of cigarette products from which full cartons only may be selected by the customer, must be within 5 feet and in plain view of the regular location of a person designated to supervise the purchase of tobacco products from the display. All other tobacco products shall be restricted in the following manner: If a check-out counter/register is not staffed, the tobacco products must be in an enclosed locked case or otherwise inaccessible for self-service.

Section IX. – Violations, Penalties and Enforcement

- 9.1 (A) Non-Criminal Disposition – Whoever violates any provision of these rules and Regulations may be penalized by a non-criminal

method in the District Court pursuant to the provisions of MGL Chapter 40 § 21D. For the purposes of this Regulation, the following fine schedule will be imposed:

First Offense – Written Warning

Second Offense - \$50.00

Third Offense - \$100.00

Fourth and subsequent offenses - \$300.00

Each Day on which a violation exists shall be deemed to be a separate offense. The third offense at a single facility shall result in a hearing before the Board of Health to suspend or withdraw a tobacco sale permit if appropriate or a determination to file a criminal complaint.

- 9.2 (B) Criminal Complaint – as provided for in MGL Chapter 111 § 31: Whoever violates any provision of these rules and Regulations may be penalized by indictment or complaint brought in the District Court. Except as otherwise be provided by law, and as the District Court may see fit to impose, the maximum penalty for any violation of these provisions shall be \$1,000.00 for each offense.

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. Variances

Variances from this Regulation may be granted by the Board of Health after a hearing at which the applicant establishes the following:

- a. The enforcement thereof would do manifest injustice, and;
- b. A variance contemplated from these Regulations will not in the opinion of the Board of Health adversely affect the purpose or intent of this Regulation.

Section XII. Effective Date

These Regulations shall be effective as of January 1, 1998.

Adopted: 9/23/1997

Effective: 1/1/1998

Amended 6/14/2000

Effective 7/1/2000

Publication Date: 6/21/2000 Harwich Oracle

HARWICH BOARD OF HEALTH

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