

## Holliston Environmental Tobacco Smoke Regulation **Complete Ban in Public Places**

### **A. Statement of Purpose:**

Whereas there exists conclusive evidence 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 cigarettes, 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 in 2000, the Public Health Service's National Toxicology Program listed environmental tobacco smoke as a known human carcinogen (U.S. DHHS, 2000, citing Cal. IPA, 1997), now, therefore, the Board of Health of the Town of Holliston 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 public places.

**B. Authority:** This regulation is promulgated under the authority granted to the Holliston Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "Boards 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:

**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.

**Board:** Board of Health of the Town of Holliston

**Bar:** An 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.

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

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

**Health Care Facility:** Any office or institution providing 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.

**Indoor 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.

**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.

**Private Social Function:** A social gathering associated with a single purpose that is not open to the public and is under the control of the host, hostess rather than the proprietor, manager, such as a wedding reception.

**Public Place:** Any building or facility owned, leased, operated or occupied by the municipality, including school buildings no longer used for student services; any enclosed area open to the general public including, but not limited to, libraries, museums, theaters, auditoriums, indoor sports arenas and/or recreational facilities, including fields not on school grounds, inns/hotel/motel lobbies, educational facilities, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public, public beaches, playgrounds and licensed child-care locations.

**Public Transportation:** 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 including indoor platforms by which such means of transportation may be accessed.

**Restaurant:** Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and 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.

**Retail Food Store:** Any establishment commonly known as a supermarket, grocery store, bakery, or convenience store 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, but not for resale, any goods, wares, merchandise, articles or other things, including retail food stores. "Retail store" shall not include restaurants as defined herein.

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

**Tavern:** An establishment holding a valid tavern license issued by the Holliston Board of Selectmen.

**Town:** The Town of Holliston.

**Workplace:** Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer (including the personal residence of the employer during those hours when used as a place of employment).

#### **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 Holliston 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) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Holliston Board of Health.

#### **E. 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 Business Agent or designee of such person, permit a person to smoke in any of the following places as defined herein: bars, health care facilities, public places, public transportation, restaurants, retail stores, and workplaces except as otherwise provided in Paragraph F of this regulations.

Additionally, no person shall smoke in any place in which a sign conforming to the requirements of Paragraph D of this regulation is posted. No person shall remove a sign posted under the authority of Paragraph D 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 consistent:

- a. Private residences, except those portions used as a child care or health care office when operating as such.
- b. Hotel and motel rooms rented to guests that are designated as smoking rooms. The rooms so designated shall be posted with signage indicating that smoking is allowed therein. The number of rooms that are designated as smoking and the number designated as non-smoking must be submitted in writing to the Board of

Health. No changes in room designation can take place without prior written approval of the Board of Health.

- c. Hotel and motel conference/meeting rooms and completely enclosed private assembly rooms while these places are being used for private social functions.
- d. Private or semiprivate rooms of nursing homes and long term care facilities, which are separately ventilated, occupied by one (1) or more patients, and all of whom are smokers who have requested in writing to be placed in rooms where smoking is permitted.
- e. Establishments that have been issued a variance from the regulation in 1999. The variances will not be renewed when they expire.

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

Notwithstanding the provisions of the foregoing Paragraph F 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.

#### **H. Violations:**

Any person who violates Section D of this regulation shall be subject to a fine of fifty dollars (\$50.00).

Any person who violates Section E this regulation shall be subject to the following:

--a fine of one hundred dollars (\$100) for the first offense.

--a fine of two hundred dollars (\$200) for the second offense within twenty-four (24) months from the date of the first violation.

--a fine of three hundred dollars (\$300) for a third violation within twenty-four (24) months from the date of the first offense and a seven (7) day suspension of a Board of Health issued permit.

--a fine of three hundred dollars (\$300) and a fourteen (14) day suspension of a Board or Health issued permit for a fourth or subsequent violation within twenty-four (24) months from the date of the first offense.

#### **I. 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. Any fines imposed under the provisions of this regulation shall enure to the Town of Holliston for such use as the town may direct.

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

**Enforcing Persons:**

Holliston Board of Health and its designees

**K. 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.

**L. Effective Date:**

The amendments to this regulation shall be effective as of July 15, 2002.

Holliston Board of Health Member:

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Sybil G. Baer, R. N.  
Chairperson

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Brian V. Moran, P.E.  
Member

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Michelle F. Zeamer, Esq.  
Member

A true copy of record  
Attest: Jacqueline S. Dellicker  
Town Clerk  
Holliston, MA 01746