



October 9, 2008

RECEIVED

2011 AUG 17 PM 2:23

00000000000000000000

Town of Dennis Board of Health Tobacco Control Regulations

SECTION I – FINDINGS AND 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 non-smokers; and whereas environmental tobacco smoke (hereinafter E.T.S.), which includes both exhaled smoke and the side stream smoke from burning cigarettes, causes the death of 53,000 Americans each year; now, therefore, the Board of Health of the Town of Dennis 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.

SECTION II – AUTHORITY

The Town of Dennis Board of Health, 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, its visitors and its workers.

SECTION III – DEFINITIONS

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

- a. **Smoking** - Inhaling, exhaling, burning or carrying any lighted tobacco product.
- b. **Tobacco Product** - Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.
- c. **Employee** - Any individual person who performs services for an employer.
- d. **Employer** - An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the **Town of Dennis** or any agency thereof, which utilizes the services of one or more individual employees.
- e. **Workplace** - Any enclosed area of a structure or portion thereof at which one or more employees perform services for their employer but not including the personal residence of the employer. Workplace also includes employee lounges, restrooms, dining areas, conference rooms, hallways, stairways and entrances.
- f. **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.

- g. **Public Place** – Any building or facility owned or operated by the town, including school buildings or grounds; any establishment open to the general public including, but not limited to, libraries, museums, theaters, auditoriums, indoor sports arenas and/or recreational facilities, inns, hotel and motel lobbies, educational facilities, health care facilities, shopping malls, retail stores, public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public, and licensed child-care locations.
- h. **Food Service Establishment** – A public place which serves food and/or beverages to the public and is licensed to do so by the Town of Dennis, including, but not limited to, restaurants, coffee shops, cafeterias, sandwich stands, private and public school cafeterias, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
- i. **Retail Store** – Any establishment whose primary purpose is to sell or offer for sale to consumers, but not for re-sale, any goods, wares, merchandise, articles or other things, including supermarkets and grocery stores. "Retail store" shall not include restaurants, as defined herein.
- j. **Ventilation System** – A mechanical system to remove tobacco smoke and exchange inside air by bringing in fresh air. Particulate air cleaners or filtration systems are not considered a ventilation system.

SECTION IV – PROHIBITION OF SMOKING IN PUBLIC PLACES

Smoking shall be prohibited in all public places, as defined in Section III (g).

SECTION V – PROHIBITION OF SMOKING IN WORKPLACES

- a. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas, such as described in Section V (b).
- b. Each employer may specifically designate enclosed areas in which employees may smoke, provided that comparable non-smoking areas of adequate size and capacity are available and provided that physical barriers and separate ventilation systems, vented directly to the outside are used to segregate smoking areas from non-smoking areas. Smoking areas shall be such that smoke **will not co-mingle with air from the non-smoking areas**. Common areas, including hallways, elevators, entranceways, stairwells, restrooms and waiting areas may not be designated as smoking areas. Areas designated as smoking and non-smoking areas must be conspicuously marked.

SECTION VI – PROHIBITION OF SMOKING IN FOOD SERVICE ESTABLISHMENTS

- a. Smoking shall be prohibited in all food service establishments.
- b. A food service establishment may designate a smoking area, if it meets the following criteria:
1. The ventilated smoking area does not exceed 20% of the establishment's total seating capacity, including the bar/lounge area, as stated on their occupancy permit;
 2. The ventilated smoking area of the food service establishment occupies a separate room or by means of physical barriers that completely enclose the ventilated smoking area;

3. The ventilated smoking area shall have a separate ventilation system designed and inspected by a qualified HVAC specialist or qualified professional approved by the Board of Health that shall ensure that smoke will not co-mingle with air in the non-smoking section(s). Plans of the design of the ventilation system and the maintenance schedule must be submitted to and approved by the Board of Health, prior to the establishment of a smoking section; and
4. The ventilated smoking area shall be designed so that it does not require patrons to pass through any portion of the ventilated smoking area to access public restrooms or when entering or exiting the establishment.

SECTION VII - EXCEPTIONS

Notwithstanding the provisions of Sections IV, V and VI of this regulation, smoking may be permitted in the following places and/or circumstances:

1. Private residences, except when used as a licensed child care facility or health care facility;
2. Hotel and motel rooms that are rented to guests that are designated as smoking rooms;
3. Hotel and motel conference/meeting rooms and private and public assembly rooms, while these places are being used for private functions; and
4. Private or semi-private rooms of nursing homes and long-term care facilities, occupied by one (1) or more patients, all of whom are smokers who have requested in writing to be placed in rooms where smoking is permitted.
5. Retail tobacco stores which are primarily for the sale of tobacco products and accessories, which are not required to hold a retail food permit and in which the sale of other products is merely incidental.

SECTION VIII – POSTING

Every person having control of premises, upon which smoking is restricted or prohibited by and under the authority of this regulation, shall conspicuously display upon the premises, including the primary entrance doorways, appropriate signs reading "Restricted Smoking" or "No Smoking". When "No Smoking" is applicable, posting 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) shall be deemed as compliance.

SECTION IX – ENFORCEMENT

This regulation may be enforced by any Town police officer, enforcement officer(s), or agents of the Town's Board of Health.

SECTION X – VIOLATIONS AND PENALTIES

Non-Criminal Disposition

- a. Whoever violates any provision of this regulation may be penalized by a non-criminal disposition as provided in G.L., c.40, §21D and the town's non-criminal disposition by-law. If non-criminal disposition is elected, then any person who violates any provisions of this regulation shall be subject to the following penalties:

First Offense:	Written Warning
Second Offense:	\$100.00 Fine
Third Offense:	\$200.00 Fine
Fourth or Subsequent Offense:	\$300.00 Fine

Subsequent offenses shall be determined as offenses occurring within two (2) years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

Permit Suspension or Revocation

- b. Following a third offense within two years calculated from the date of the first noticed offense, the Board of Health may suspend or revoke any permit issued pursuant to these regulations for any violation of these regulations, or any other applicable General Law, regulation or by-law. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.
- c. Any person aggrieved by a decision of the Board of Health, or by the failure of the Board to act, may appeal to Superior Court, Barnstable County, pursuant to the provisions of Massachusetts General Laws.

Other

- d. Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars (\$300.00). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Board of Health may employ the remedies set forth in G.L. c.270, §6 for violations of provisions relating to the sale of tobacco products to minors.

The Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

SECTION XI – CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of the foregoing Section VI and VII 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.

SECTION XII – 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 XIII – EFFECTIVE DATE

These regulations shall be effective as of **April 1, 2000**.

DENNIS BOARD OF HEALTH

**Thomas J. Perrino, Vice Chairman
Diane Chamberlain, Clerk
Barbara Bird**

**Approved: October 09, 2008
Effective: October 23, 2008**

Approved:	Amended:
10/28/99	12/17/99
	07/12/07
	05/08/08
	10/09/08