



# Town of Ipswich Board of Health Environmental Tobacco Regulation

## 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 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, 200, citing Cal. EPA, 1997), now, therefore, the Board of Health of the Town of Ipswich recognizes the right of those who wish to breathe smoke free air and establishes this regulation [hereinafter "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 Ipswich 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:

**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. Revenue generated from the serving of alcoholic beverages must be equal to or greater than eighty-five percent (85%) 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 Town of Ipswich.

**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 natural person who performs services for an employer.

**Employer:** A natural person, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Ipswich 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 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.

**Private Club:** An establishment with a pouring license with limited membership into which admission cannot be obtained by any person at his/her pleasure.

**Public Place:** Any building or facility owned, leased, operated or occupied by the municipality, including school buildings or grounds; any area 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, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public, 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 for on-premises consumption, 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 that sells or offers 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.

**Town:** The Town of Ipswich

#### **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 through the Ipswich Board of Health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed on 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 Ipswich 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: restaurants, health care facilities, indoor sports arenas, public places, public transportation, retail food stores and retail stores, except as otherwise provided in paragraph F of this Regulation.

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.

Any private club or bar that opens an establishment in Ipswich after the date of enactment of this Regulation shall be smoke free at all times.

**F. Exceptions:**

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

1. Private residence(s), except those portions used as a childcare or health care office when operating as such.
2. 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.
3. Private or semi-private rooms of nursing homes that are separately ventilated and occupied by one (1) or more patients who have requested in writing to be placed in rooms where smoking is permitted.
4. Private clubs that were in existence at the time the Regulation was adopted.
5. Bars that were in existence at the time the Regulation was adopted.

**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 this Regulation shall be subject to a fine of one hundred dollars (\$100.00) for a first offense, two hundred dollars (\$200.00) for a second offense within one year of the date of the first offense and three hundred dollars (\$300.00) for a third or subsequent offense within one year of the date of the first offense.

In addition to monetary fines set above, any permittee or license holder who violates this Regulation more than three (3) times within one year of the date of the first offense may be subject to the suspension of any and/or all Board of Health licenses and permits for thirty (30) consecutive business days.

**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 fine imposed under the provisions of this Regulation shall be deposited in the general fund of the Town 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 or by filing a criminal complaint at the appropriate venue. Non-criminal disposition authority may be found in the Town of Ipswich, General Bylaws, Chapter XVII.

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

Enforcing Person(s): Ipswich Board of Health and its designees

**K. Severability:**

If any paragraph or provision of this Regulation is found to be illegal, against public policy, or unconstitutional, it shall not affect the legality of any remaining paragraphs and/or provisions.

**L. Effective Date:**

This Regulation shall be effective as of August 1, 2003.

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Kenneth Zinn, Chairman

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Carl Hiltunen, Board Member

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Susan Hubbard, Board Member

Hearing Notice Published February 27, 2003 & March 6, 2003

Regulation Adopted March 17, 2003

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Town Clerk