



**TOWN OF WALPOLE  
BOARD OF HEALTH**

**REGULATION PROHIBITING SMOKING IN WORKPLACES, PUBLIC  
PLACES AND MEMBERSHIP ASSOCIATIONS THAT ARE 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, Foegen W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212); and whereas the U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen 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 Walpole 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, public places and membership associations.

**B. Authority:** This regulation is promulgated under the authority granted to the Walpole Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(2)(j) which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ... health ... regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth ... or political subdivision of the commonwealth."

**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 workplace, public place or membership association to be the manager or otherwise in charge of said workplace, public place or membership association.

**Enclosed:** A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including, but not limited to, an office, function room or hallway.

**Employee:** An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary

employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.

Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one or more employees at one or more workplaces, at any one time, including the town of Walpole.

Membership association (also known as a private club): A not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. An entity shall not be a membership association for the purposes of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

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 building, facility or vehicle owned, leased, operated or occupied by the municipality, including school buildings and grounds; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, retail tobacco stores, smoking bars, supermarkets, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, 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, public mass transit conveyances and indoor platforms and enclosed outside platforms, open meetings of a governmental body as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, and licensed child-care locations.

Retail tobacco store: An establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental.

Smoking bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises, including, but not limited to cigar bars and hookah bars, that derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products and is required by Mass General Laws ch.270, Section 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue.

Deleted: and

"Smoking" or "smoke": The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Workplace: An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and in either case where the employer has the right or authority to exercise control over the space.

#### **D. Smoking Prohibited:**

1. Smoking is prohibited in the enclosed areas of workplaces, public places and membership associations, also known as private clubs if the membership association is a workplace.

2. It shall be unlawful for any person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such workplace, public place or membership association, to permit a violation of this regulation.

3. Smoking Bar establishments are prohibited in the Town of Walpole.

#### **E. Exemptions:**

Notwithstanding subsection D, smoking may be permitted in the following places and circumstances:

1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the office of child care services or as health care related office of facility;

2) Premises occupied by membership association;

a) if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity,

b) if the premises are not located in a public building,

c) if the premises is not a workplace,

d) if the membership association has no employees.

3) Subject to the conditions of 2. a - d, smoking may be permitted in an enclosed indoor space of a membership association at all times if the space is restricted by the association to admittance only of its members and the invited guest of a member. However no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

i. open to the public; or

ii occupied by a non-member who is not an invited guest of a member; or

iii rented from the association for a fee or other agreement that compensates the association for the use of such space.

#### **F. Posting notice of prohibition:**

Every workplace, public place or membership association in which smoking is prohibited by and under the authority of this regulation shall conspicuously display in the premises "No Smoking" signs provided by the Massachusetts Department of Public

Health and available from the Walpole 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 Walpole Board of Health.

**G. Violations/Non Criminal Disposition:**

Any workplace, public place or membership association, person having control of the premises or its business agent, who violates any provision of this regulation 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 workplace, public place or membership association, person having control of the premises or its business agent, to ensure compliance with all sections of this regulation. The violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00).
2. In the case of a second violation within 36 months of the date of the first violation, a fine of two hundred dollars (\$200.00).
3. In the case of three or more violations within 36 months of the current violation, including the current violation, a fine of three hundred dollars (\$300.00).

**H. Enforcement:**

This regulation shall be enforced by the Walpole 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. 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.

**J. Conflict with Other Laws or Regulations:**

Notwithstanding the provisions of the foregoing Paragraph D 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.

**K. A Variance:**

A variance from section D.1 may be sought for a specific employee who is also a member of an association. Said variance may or may not be granted at the sole discretion of the Board of Health and must be renewed annually.

The above regulations prohibiting smoking in workplaces, public places and membership associations that are workplaces were adopted at a regular meeting of the Board of Health effective: **April 1, 2005.**

| Amended: 1/13/09  
Amended 3/24/09