

**CITY OF EVERETT, MASSACHUSETTS
BOARD OF HEALTH
WORKPLACE SMOKING RESTRICTIONS**

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, Foegen 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. EPA, 1997); now, therefore, the Board of Health of Everett 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 workplaces.

B. Authority: This regulation is promulgated under the authority granted to the Everett Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards 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: The Board of Health of the city of Everett.

City: The city of Everett.

Employee: Any person who performs services for an employer.

Employer: A person, partnership, association, corporation, trust, or other organized group of individuals, including the city of Everett or any agency thereof, which utilizes the services of one (1) or more individual employees.

Enclosed: A space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, halls and vehicles.

Definition of Long Term Care Facility: A convalescent home, nursing home, rest home or charitable home for the aged licensed under the provisions for Section 71 of Massachusetts General Laws Chapter 111.

Definition of Nursing Home: Any institution or facility providing nursing care which is licensed under Massachusetts General Law Chapter 111, Section 71 or under any other law of the commonwealth, including but not limited to convalescent homes, charitable homes for the aged.”

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: A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a “club license” or a “war veterans club license” as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Public place: Any building or facility owned, leased, operated or occupied by the municipality, including school buildings or grounds and municipal vehicles; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, libraries, museums, theaters, banks, laundromats, indoor sports arenas and/or recreational facilities, auditoriums, bingo/beano, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public and licensed child-care locations.

Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city.

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

Third Party Contractor: Any person or company who performs services for a membership or lessees.

Workplace: Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer.

D. Smoking Prohibited:

1. Smoking is prohibited in all workplaces, all public places, all public transportation vehicles, and all private clubs.

2. It shall be unlawful for any 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, to permit a violation of this regulation.

E. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Board of Health Regulation shall conspicuously display upon the premises and at all entrances “No Smoking” signs 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 “by order of the Board of Health” with a phone number specified by the Board of Health. No person shall remove a sign posted under the authority of this Board of Health Regulation.

F. Exceptions:

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

1. Private residences, except those portions used as a child care or health care office when operating as such.
2. Hotel and motel rooms rented to guests that are designated as “smoking rooms”, provided that no more than 25% of rooms shall be allocated as such. A room so assigned shall have signs posted indicating that smoking is allowed therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the Board of Health.
3. Smoking by residents and patients of nursing homes and long-term care facilities may be permitted in one separately enclosed designated smoking room, provided that the air in the designated smoking room does not interfere with the smoke-free air in the remainder of the facility.
4. Retail tobacco stores, which are primarily for the sale of tobacco products and paraphernalia, in which the sale of other products is merely incidental, prohibit minors from entering the establishment and are not required to possess a retail food permit.

G. Violations:

It shall be the responsibility of the employer and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his/her place of business or any person in violation of any section 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 24 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 24 months of the current violation, a fine of three hundred dollars (\$300.00).
4. Any establishment who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

H. Enforcement:

As an alternative to initiating criminal proceedings, violations of this Board of Health Regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Board of Health and its designees. Any fines imposed under the provisions of this Board of Health Regulation shall ensure to the City of Everett for such use as the city may direct.

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. 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.

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

Penalty:	\$100 for the first offense
	\$200 for the second offense
	\$300 for the third or subsequent offense

Enforcing Persons: Everett Board of Health and its designees

J. 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.

K. 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.

L. Effective Date:

This regulation was adopted on November 18, 2003. It shall be effective as of the date of implementation of the state of Massachusetts' smoking ban, which at the time this regulation was passed was set to be July 5, 2004. However, this regulation shall be implemented no later than August 1, 2004.



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