

# TOWN OF CHATHAM BOARD OF HEALTH

## TOBACCO CONTROL REGULATION

SECTION I FINDING AND PURPOSE.....-2-

SECTION II AUTHORITY.....-2-

SECTION III DEFINITIONS.....-2-

SECTION IV NON-SMOKING/SMOKING IN PUBLIC PLACES.....-3-

SECTION V PROHIBITION OF VENDING MACHINES.....-3-

SECTION VI PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY  
HEALTH CARE FACILITIES.....-4-

SECTION VII WORKPLACE.....-4-

SECTION VIII POSTING.....-4-

SECTION IX SALE AND DISTRIBUTION OF TOBACCO PRODUCTS.....-4-

SECTION X VIOLATIONS AND PENALTIES.....-5-

SECTION XI OTHER APPLICABLE LAWS.....-6-

SECTION XII SEVERABILITY.....-7-

SECTION XIII EFFECTIVE DATE.....-7-

## **SECTION I FINDING AND PURPOSE**

The 1986 Surgeon General's Report on "The Health Consequences of Involuntary Smoking" clearly documents that nonsmokers are placed at risk for developing disease as a result of exposure to environmental tobacco smoke (ETS). In January 1993, the Environmental Protection Agency classified ETS as a group A carcinogen, among the most toxic substances known to cause cancer in humans. Group A carcinogens include dioxin, benzene, radon, and asbestos. There is no safe level of exposure to ETS. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in nonsmokers. Exposure to environmental tobacco smoke presents a serious and substantial public health risk. Of particular concern is the workplace environment of nonsmokers, where they may be subjected to sustained, involuntary exposure. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function including asthmatics and those with obstructive air-way disease.

Studies have shown that vending machines afford an opportunity for unauthorized sale of cigarettes to minors. Evidence further demonstrates that tobacco is extremely addictive. Approximately 80% of all smokers begin smoking before the age of eighteen and more than 3,000 young people begin smoking every day in this nation. The Chatham Board of Health finds that the sale of tobacco products is incompatible with the mission of health care providers because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medications.

Public Beaches and Parks are our most visited natural areas. Smoking bans in these areas will provide environmental, aesthetic and health advantages to our community helping to ensure clean sand and water for our residents and visitors.

## **SECTION II AUTHORITY**

The Board of Health of the Town of Chatham pursuant to Massachusetts General Laws Chapter III, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

## **SECTION III DEFINITIONS**

- 3.1 Bar/Lounge: An establishment, with or without a food handler's license, devoted primarily to serving alcoholic beverages for consumption by guests on the premises, in which the consumption of food is incidental only to the consumption of such beverages.
- 3.2 Employee: A person who performs services for wages or other consideration.
- 3.3 Employer: A person, partnership, association, corporation, trust, or other organized group, including the County of Barnstable and any department or agency thereof, and any municipal entity, which utilizes the services of two (2) or more employees.
- 3.4 Food Service Establishment: An establishment having one or more seats at which food is served to the public that is a covered area and/or located within a permanent structure.
- 3.5 Function Room/Hall: A separate, enclosed room used for private functions within a food service

establishment.

- 3.6 Health Care Provider: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services or employs health care providers licensed or subject to licensing by the Massachusetts Department of Public Health under M.G.L. c. 112. Health Care provider includes hospitals, clinics, health centers, pharmacies, drug stores and doctor and dentist offices.
- 3.7 Minor: A person under eighteen years of age.
- 3.8 Public Place: An enclosed indoor area that is open to and used by the general public, including but not limited to the following facilities: licensed childcare facilities; educational facilities including school grounds; clinics; nursing homes; all elevators, stairwells, halls, lobbies, and entrance ways accessible to the public; bars/lounges; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels and motels; retail shops; food service establishments; public restrooms; laundromats; hair salons; barbershops; libraries; municipal buildings; museums; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and any function rooms/halls when used for public meetings or public social functions. A function room/hall used for a private social function, in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements, shall not be construed as a public place.
- In addition the following outdoor locations are defined as a Public Place: public beach or park owned and operated by the Town of Chatham.
- 3.9 Self Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.
- 3.10 Smoking: The lighting of, or having in one's possession any lighted cigarette, cigar, pipe, or other tobacco product.
- 3.11 Tobacco Product: Cigarettes, cigars, snuff, chewing tobacco, bidis, pipe tobacco, or tobacco in any of its forms.
- 3.12 Tobacco Vending Machine: A mechanical or electrical device which dispenses tobacco products by self-service, with or without the assistance of a clerk or operator.
- 3.13 Workplace: Any areas within a structure or portion thereof at which two (2) or more employees perform services for their employer. It also includes employee lounges, restrooms, dining areas conference rooms, hallways, stairways, and entranceways.

#### **SECTION IV NON-SMOKING/SMOKING IN PUBLIC PLACES**

As of January 1, 1999, smoking shall be prohibited in all enclosed public places within the Town of Chatham, as defined in section 3.7.

As of January 1, 2014 smoking shall be prohibited in all public places including public parks and beaches.

#### **SECTION V PROHIBITION OF VENDING MACHINES**

No vending machines for dispensing cigarettes or other tobacco products are allowed in the Town of Chatham.

## **SECTION VI PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY HEALTH CARE PROVIDERS**

No health care provider located in the Town of Chatham shall sell tobacco products or cause or allow tobacco products to be sold. No retail establishment that operates, maintains, or employs a health care provider within it, such as, but not limited to a pharmacy or drug store, shall sell tobacco products or cause or allow tobacco products to be sold.

## **SECTION VII WORKPLACE**

- 7.1 It shall be unlawful for any person to smoke in any workplace.
- 7.2 Each person having control of premises upon which smoking is prohibited by this regulation shall not knowingly permit a violation of this regulation.

## **SECTION VIII POSTING**

Every person having control of a premise where smoking is prohibited by this regulation shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited by Law". Posting of the international symbol for "No Smoking" (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 SALE AND DISTRIBUTION OF TOBACCO PRODUCTS**

- 9.1 **Permit:** To monitor compliance of the sale of tobacco products, the Chatham Board of Health will issue a Tobacco Sales Permit. No person, firm, corporation, establishment or agency, shall sell tobacco products within the Town of Chatham without a valid tobacco sales permit issued by the Board of Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits must be renewed annually at a time and fee set forth by the Board of Health. A tobacco sales permit is non-transferable. In addition, each applicant for a Tobacco Sales Permit is required to show proof of a current tobacco sales license issued by the Commonwealth of Massachusetts Department of Revenue. A separate permit is required for each retail establishment selling tobacco. Issuance of a tobacco permit by the Chatham Board of Health shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- 9.2 **Sales to Minors:** In conformance with Massachusetts General Laws, Chapter 270, Section 6, no person, firm, corporation, establishment, or agency, shall sell tobacco products to a minor. Each employee working in an establishment licensed to sell tobacco products shall be required to read the Board of Health regulations and State Laws regarding the sale of tobacco and sign a form indicating that such regulations/laws have been read and understood, a copy of which must be placed on file in the office of the employer and retained. Such signed forms must be made available for inspection during the license holder's normal business hours, upon request of an agent of the Board of Health. All distributors/retailers of tobacco products or tobacco merchandise must require that, if a customer

appears to possibly be under 25 years of age, the customer present a valid State issued picture identification card or driver's license with appropriate photograph to confirm that the customer is of legal age (18 years of age) to purchase the tobacco product. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Chatham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person at or approaching each cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

- 9.3 Distribution of Tobacco Products: No firm, corporation, establishment, or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Chatham. Such endeavors include, but are not limited to, product "giveaways", or distribution of a tobacco product as incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals, or attached to packaging. No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than 20 cigarettes.
- 9.4 Self-Service (Freestanding) Displays: It has been shown that self-service (freestanding) tobacco displays encourage illegal activity by youth and provide youth with easier access to tobacco products. Therefore, tobacco products on freestanding displays in retail locations, where a tobacco product may be selected by the customer, shall be prohibited. All retail sales must be face-to-face between the seller and the buyer.

**SECTION X VIOLATIONS AND PENALTIES**

- 10.1 Violations of this smoking regulation will be subject to the provisions of the Regulation of the Town of Chatham regarding non-criminal disposition, according to the Town of Chatham Bylaws.
- 10.2 Any person who knowingly violates any provision of this regulation, or smokes in a municipal area subject to regulation, in which a "Smoking Prohibited by Law" sign or its equivalent is conspicuously displayed, shall be punished by a fine of \$50 for each offense.
- 10.3 Any proprietor(s) or other person(s) in charge of a public place or workplace, including municipal entities, who fail(s) to comply with these regulations shall be subject to the following actions for each offense:

<b>VIOLATION</b>	<b>FINE</b>
First Offense	Warning
Second Offense	\$50.00
Third Offense	\$100.00
Fourth Offense	\$200.00
Each Subsequent Offense	\$300.00

- 10.4 Persons, firms, corporations, or agencies selling tobacco products without a Tobacco Sales Permit, or any health care provider selling tobacco products, shall be subject to the following actions for each offense:

<b>VIOLATION</b>	<b>FINE</b>
First Offense	Warning
Second Offense	\$100.00
Each Subsequent Offense	\$300.00

- 10.5 Persons, firms, corporations, or agencies selling tobacco products to a minor, shall be subject to the following actions for each offense:

<b>VIOLATION</b>	<b>FINE</b>
First Offense	\$100.00
Each Subsequent Offense	\$200.00

Said fines shall be levied to the owner of the establishment. Owners and employees, who are repeat offenders, (2 and over) within 12 months of the date of the current violation) the tobacco sales permit shall be suspended for seven (7) consecutive business days. The offender, at the discretion of the Board, shall be subject to tobacco merchant education at his/her own expense. Documentation of such training shall be submitted to the Board. The Chatham Board of Health shall provide a notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefore and establish a time and a date for a hearing which date will be no earlier than seven (7) days after the date of said notice. The permit holder or its' business agent shall have the opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore, in writing. The Chatham Board of Health after a hearing may suspend the tobacco sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

- 10.6 In addition to the remedies provided by sections 9.2, 9.3, 9.4, and 9.5 above, the Board of Health may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction. For the purposes of determining whether any of these offenses are repeat violations, all offenses that have occurred within a period of two years shall be deemed concurrent.

## **SECTION XI OTHER APPLICABLE LAWS**

- 11.1 The Board of Health or its enforcement officer(s) shall enforce this regulation. Any violation of these regulations may be enforced and punished by the provisions of the Code of Administrative Legislation, General Provisions, Section 1.1 et seq., non-criminal disposition.
- 11.2 Any citizen who desires to register a complaint of non-compliance under this regulation may do so by contacting the Health Department (508) 945-5165.

## **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**

This regulation was promulgated on June 15, 1998. This regulation shall be effective as of January 1, 1999.

Revisions shall become effective on January 3, 2008

Revisions shall become effective July 7, 2011

Revisions shall be effective January 1, 2014

Signed:

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Edward Sheehan, Chairman

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Mary Ann Gray, Vice Chairman

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Ronald Broman, Member

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Allen Ward, M.D., Member

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Ted Whittaker, Member