

## **Chapter 238**

### **SMOKING**

**[HISTORY: Adopted by the Tri-Town Health District (Lee, Lenox and Stockbridge Board of Health) 7-8-1992, as amended 1-1-1995. Subsequent amendments noted where applicable.]**

#### **§ 238-1. Findings; statutory authority.**

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies and irritation to the eyes, nose and throat to both the smoker and nonsmoker exposed to secondhand smoke. Evidence further demonstrates that tobacco is extremely addictive. More than 80% of all smokers begin smoking before age 18, and more than 3,000 young people begin smoking every day in this nation. Massachusetts youths are beginning smoking at very young ages. Therefore, these regulations are adopted pursuant to MGL c. 111, § 31 as reasonable health regulations designed to protect and improve the health of the residents of the Towns of Lee, Lenox and Stockbridge.

#### **§ 238-2. Definitions.**

As used in this regulation, the following terms shall have the meanings indicated:

**BAR** — An area which is primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

**EMPLOYEE** — Any individual who performs services for an employer in return for wages or profit or an individual who performs services for an employer as a nonpaid volunteer.

**EMPLOYER** — Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Towns of Lee, Lenox and Stockbridge or any agency thereof, who or which regularly uses the services of two or more employees.

**ENCLOSED** — A space bound by walls and under a roof.

**INDOOR SPORTS ARENA** — Any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

**NONSMOKING AREA** — Any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.

**PUBLIC PLACE** — An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: licensed child-care locations, educational facilities, elevators accessible to the public, clinics and nursing homes, inns, hotel and motel lobbies, stairwells, halls, entranceways and public rest rooms, libraries, schools, municipal buildings, museums, retail stores, retail food establishments, indoor sports arenas, theaters,

auditoriums, public transit facilities and any rooms or halls when used for public meetings. A room or 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.

**RESTAURANT** — Any establishment serving food for consumption on the premises which maintains tables for use of its customers. This definition includes cafeterias and cafeterias in the workplace.

**RETAIL FOOD ESTABLISHMENT** — Any establishment commonly known as a "supermarket" or "grocery store" in which the primary activity is the sale of food items to the public for off-premises consumption.

**RETAIL STORE** — Any establishment selling goods or articles or personal services to the public.

**RETAIL TOBACCO STORE** — Any establishment whose primary business is that of exclusively selling tobacco products. Stores that sell food products and tobacco products do not apply to this category.

**SEATING CAPACITY** — That capacity designated on the occupancy permit of a restaurant, theater or sports arena.

**SMOKING** — The lighting of any cigar, cigarette, pipe or other tobacco product or having possession of any lighted cigar, cigarette, pipe or other tobacco product.

**TOBACCO PRODUCT VENDING MACHINE** — Any vending machine which contains within it tobacco products that are available for sale to the general public. Vending machines that sell both tobacco products and products of a nontobacco nature shall apply under this definition.

### **§ 238-3. Public places.**

No person shall smoke in any public place, except that smoking shall be permitted in specifically designated smoking areas as hereinafter provided. No place governed by these regulations shall be designated as a smoking area in its entirety. Nothing in this section shall be construed to require the designation of a smoking area. "Workplace" means any area within a structure, or portion thereof, at which two or more employees perform services for their employer. It also includes employee lounges, rest rooms, conference rooms, hallways, stairways and entranceways.

#### **A. Restaurants.**

- (1) All restaurants shall become smoke free by July 1, 1995. Prior to that date nonsmoking areas shall be designated as follows:
  - (a) September 1, 1992, to June 30, 1994: a minimum 70% of seating capacity shall be designated as nonsmoking.
  - (b) July 1, 1994, to June 30, 1995: a minimum 85% of seating capacity shall be designated as nonsmoking.
  - (c) July 1, 1995: smoking prohibited in restaurants.

- (2) Each restaurant shall have and comply with a policy of asking seating preference of patrons.
  - (3) Seats at the bar, in the same room, shall be included when determining seating capacity for the purpose of calculating the size of the nonsmoking area.
- B. Museums, libraries, clinics, nursing homes, auditoriums, indoor sports arenas, hotels/motels and municipal buildings. Smoking areas may be designated in museums, libraries, inns, hotel and motel lobbies, clinics, nursing homes, long-term care facilities, theaters, auditoriums, educational facilities, indoor sports arenas and municipal buildings; provided, however, that comparable nonsmoking areas of sufficient size and capacity are available, and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, rest rooms and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.
- C. Public transit facilities. The prohibition on smoking in public places shall apply to buses, taxis and other means of public mass transit while operating within the boundaries of the Towns of Lee, Lenox and Stockbridge.
- D. Retail stores. Smoking shall be prohibited in all retail food stores.
- E. Hotels/Motels. Hotels and motels shall designate at least 75% of all rooms as nonsmoking rooms.
- F. Areas where smoking is optional. Notwithstanding any other provision of these regulations, the following areas shall not be subject to the smoking restrictions of the regulations:
  - (1) Any business which has been declared by its owner, operator, manager or person in charge to be a nonsmoking establishment.
  - (2) Bars.
  - (3) Private residences.
  - (4) Hotel and motel rooms rented to guests, to the extent that no more than 25% of all rooms may be rented where smoking is optional.
  - (5) Retail tobacco stores.
  - (6) Hotel and motel conference/meeting rooms and public and private assembly rooms while these places are being used for private functions.
  - (7) Private or semiprivate rooms of nursing homes and long-term care facilities occupied by one or more patients all of whom are smokers who have requested, in writing, on the facility admission form to be placed in rooms where smoking is permitted.
  - (8) Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle.
  - (9) Performers upon the stage, provided that the smoking is part of a theatrical production.

- G. Implementation. The proprietor(s) or other person(s) in charge of a place covered by this regulation shall prevent smoking in nonsmoking areas by:
- (1) Conspicuously posting a notice or sign at each entrance to the place indicating that smoking is prohibited therein except in specifically designated areas and, in addition, conspicuously posting "Smoking" or "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) in every area where smoking is permitted or prohibited by this regulation.
  - (2) Arranging seating so that existing physical barriers, ventilation systems and available space are utilized to minimize the exposure to smoke of persons in the nonsmoking area. Nonsmoking areas are to be situated near the fresh air intake vent of the building.
  - (3) Asking patrons who may be smoking in the nonsmoking area either to refrain from smoking or to move to a smoking area.
  - (4) Using any other means which may be appropriate and reasonable to enforce these regulations.

**§ 238-4. Workplace.**

- A. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas as described in Subsection B.
- B. Each employer may specifically designate enclosed areas in which employees may smoke; provided, however, that comparable nonsmoking areas of sufficient size and capacity are available, and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, rest rooms and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.
- C. Each person having control of premises upon which smoking is prohibited by this regulation, or his or her agent or designee, shall conspicuously display upon the premises an appropriate number of signs reading "Smoking Prohibited by Law."
- D. It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation to knowingly permit, or for his or her agent to knowingly permit, a violation of this regulation.

**§ 238-5. Enforcement in public places and workplace.**

- A. Any person who smokes in a nonsmoking area shall be subject to a fine of not less than \$20 nor more than \$50 for each violation.
- B. Any proprietor(s) or other person(s) in charge of a public place or workplace who fails to comply with these regulations shall be subject to both:
  - (1) A fine of not less than \$200 for each day a violation continues; and

- (2) Suspension of any license issued by the Board of Health for that public place for a period of up to two days for each day of noncompliance.
- C. In addition to the remedies provided by Subsections A and B above, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a public place or workplace to comply with any provision of this regulation may apply for injunctive relief to enforce the provisions of this regulation in any court of competent jurisdiction.
- D. Any person aggrieved by the failure or refusal to comply with restrictions in any municipal building may complain, in writing, to the head of the department or agency occupying the area where the violation takes place. Said agency or department head shall respond, in writing, within 15 days to the complainant that he or she has inspected the area described in the complaint and has enforced the provisions of this regulation as provided herein.

**§ 238-6. Other applicable laws.**

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

**§ 238-7. Sale of tobacco to minors; tobacco sales permit.**

- A. In conformance with MGL c. 270, § 6, whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of 18 or, not being his or her parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of 18 shall be punished by a fine of not less than \$100 for the first offense, not less than \$200 for the second offense and not less than \$300 for any third or subsequent offense.
- B. No person, firm, corporation, establishment or agency shall sell tobacco within the Towns of Lee, Lenox and Stockbridge without a tobacco sales permit issued by the Tri-Town Health Department.
  - (1) An application for a tobacco sales permit shall be filed within 45 days following the effective date of this regulation on a form provided by the Tri-Town Health Department.
  - (2) The fee for an initial tobacco sales permit shall be \$100. All such permits shall be renewed annually, by January 1, at an annual renewal fee of \$100.
  - (3) Tobacco sales permits must be posted conspicuously to the public.
- C. In conformance with MGL c. 270, § 7, a copy of MGL c. 270, § 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell cigarettes at retail. The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single cigarette package sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine

feet from the floor. For all other cash registers that sell cigarettes, a notice shall be attached which is no smaller than nine square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or more than nine feet from the floor.

- D. The Board of Health or its enforcement officer(s) shall enforce this regulation.
- E. Whoever violates this provision shall be punished by a fine of not less than \$50. Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of \$10.

**§ 238-8. Sale of tobacco by minors.**

No person or entity selling tobacco products shall allow anyone under 18 years of age to sell cigarettes or other tobacco products.

**§ 238-9. Selling tobacco for promotional purposes.**

No person or entity shall, in or upon any part of the streets, parks, public grounds, public buildings or other public places within the Towns of Lee, Lenox and Stockbridge, distribute any products containing tobacco, without charge, for any promotional or other commercial purpose.

**§ 238-10. Tobacco product displays.**

Display of cigarette/tobacco products from which individual packages or cartons may be selected by the customer is prohibited.

**§ 238-11. Vending machines.**

No tobacco products may be sold by vending machine within the Towns of Lee, Lenox and Stockbridge.

**§ 238-12. Violations and penalties.**

Any person or entity who or which fails to comply with §§ 235-8, 235-9, 235-10 and 235-11 of these regulations shall be punished by a fine of not less than \$100 nor more than \$200.

**§ 238-13. 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.

**§ 238-14. Effective date.**

These regulations shall be effective as of January 1, 1995.