

**COMMONWEALTH OF MASSACHUSETTS  
TOWN OF DUXBURY  
BOARD OF HEALTH**

**RULES AND REGULATIONS GOVERNING THE USE AND  
DISTRIBUTION OF TOBACCO PRODUCTS**

**4.0 REGULATIONS AFFECTING SMOKING IN CERTAIN PLACES AND  
THE SALE, VENDING AND DISTRIBUTION OF TOBACCO IN  
DUXBURY**

**4.01 Authority:**

This regulation is promulgated under the authority granted to the Duxbury Board of Health under the Massachusetts General Laws, Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

**4.02 Declaration of Findings & Policy:**

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat and whereas at least one-half of all smokers begin smoking before the age of eighteen; and whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and whereas nicotine in tobacco has been found by the United States Surgeon General to be a powerfully addictive drug; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and whereas a board of health regulation requiring proof of age in order to purchase tobacco products is necessary in order to restrict the access of minors to tobacco products in the interest of public health; now, therefore it is the policy of the Duxbury Board of Health to discourage minors from experimenting with tobacco and to make tobacco products less accessible to minors and to protect the right of those who wish to breathe smoke free air and improve the public health and welfare by prohibiting smoking in public places.

**4.03 Definitions:**

For the purpose of this regulation, the following words shall have the meanings respectively ascribed to them by this section:

**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.

**Board:** The Board of Health of the Town of Duxbury.

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**Business:** Any sole proprietorship, partnership, joint venture, corporation or other business entity formed, including retail establishments where goods and services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional and commercial services are delivered.

**Employee:** Any individual person who performs services for an employer.

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

**Enforcement Officer:** Includes any agent of the Duxbury Board of Health, and law enforcement officials.

**Municipal Building:** Any enclosed indoor area that is located in a building owned or occupied by a department or an agency of the Town of Duxbury.

**Municipal Vehicle:** Any vehicle owned or operated by the Town of Duxbury, including without limitation, cars, trucks and buses.

**Non-Smoking Area:** Any area that is designated and posted by the proprietor or person in charge as the place where smoking by patrons, employees or others is prohibited.

**Permit for Location & Sale:** The permit issued by the Duxbury Board of Health which authorizes any business including retail establishments and bars, regulating the location and sale of tobacco products in the Town of Duxbury.

**Person:** Any person, 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 agents or designees of any of the foregoing.

**Private Social Function:** A social gathering associated with a single purpose not open to the public, and under the control of the host or hostess.

**Private Club:** A not-for-profit establishment with a defined membership.

**Public Place:** Any building or facility owned or operated by the town, 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.

**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, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

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**Retail Food Establishment:** Any establishment commonly known as a supermarket or grocery store that sells food items to the public for off-premise 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 supermarkets and grocery stores. "Retail store" shall not include restaurants as defined herein.

**Seating Capacity:** That capacity designated on the Certificate of Inspection (issued by the Building Department) of a restaurant, theater or sports arena.

**Self Service Display:** Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

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

**Sports Arena (Indoor):** 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.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

**Tobacco Vending Machine:** Any automated or mechanical, self-service device, which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

**Workplace:** Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer but not including the personal residence of the employer.

### 4.04 SMOKING IN MUNICIPAL BUILDINGS:

Smoking is prohibited in all municipal buildings (including a twenty (20) foot buffer zone for each building entrance), in offices, hallways, elevators, meeting rooms, bathrooms, garages, common areas, and in all municipal vehicles. Effective date: August 2, 1995.

### 4.05 PROHIBITION OF SMOKING IN PUBLIC PLACES/ WORKPLACES:

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 agent or designee of such person, permit a person to smoke in any of the following places as defined herein: bars, health care facilities, public places, public transportation vehicles, public elevators, restaurants, retail stores, retail food establishments, polling places and town meetings (M.G.L. c.54, Sec.73), school buildings, school facilities, school grounds, school buses (M.G. L. c.71, Sec. 37H), and

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workplaces (including a twenty (20) foot buffer zone for each building entrance) except as otherwise provided in paragraph 1 of this section.

1. Notwithstanding the provisions of the foregoing paragraph of this regulation, smoking shall be permitted in the following places:

Exceptions:

- (a) Private residences, except when used as a licensed child care facility or health care facility;
  - (b) Hotel and motel rooms that are rented to guests that are designated as smoking rooms.
  - (c.) Private Clubs, as defined in this regulation, except for when the function is open to the public
2. Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously displayed upon the premises “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 across it.)



**4.06 ENFORCEMENT OF SECTION 4.05:**

1. Any person who smokes in a non-smoking area shall be subject to a fine for each violation.  
The penalty for violations, by non-criminal complaint pursuant to the provisions of MGL Chapter 40, Section 21D, of any of the aforementioned Board of Health Rules and Regulations shall be \$25 for the first offense; \$50 for the second offense; \$100 for the third offense and \$200 for the fourth and each subsequent offense.
2. Any proprietor(s) or other person(s) in charge of a public place or workplace who fail(s) to implement these regulations shall be subject to a fine.  
The penalty for violations, by non-criminal complaint pursuant to the provisions of MGL Chapter 40, Section 21D, of any of the aforementioned Board of Health Rules and Regulations shall be \$25 for the first offense; \$50 for the second offense; \$100 for the third offense and \$200 for the fourth and each subsequent offense.
3. An addition to the remedies provided by (1) and (2) 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 implement any provision of this subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.
4. 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 fifteen (15) days to the complainant that he has inspected the area described in the complaint and has enforced the provisions of this section as provided herein.

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**4.07 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.

**4.08 TOBACCO SALES TO MINORS PROHIBITED:**

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor or not being the minor's parent or guardian, give tobacco products to a minor.
2. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products and which states: "Massachusetts state law prohibits the sale of tobacco products to any person under the age of eighteen (18) years of age. See Massachusetts General Laws, Chapter 270, Section 6." Said notice shall be that notice provided by the Massachusetts Department of Public Health and available from the Duxbury Board of Health.
3. Identification: Each retailer shall verify, by means of photographic identification containing the bearer's date of birth (including but not limited to government identification), that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.

**4.09 TOBACCO SALES PERMIT:**

1. No person shall sell or otherwise distribute tobacco within the town of Duxbury without first obtaining a tobacco sales permit issued by the Duxbury Board of Health.
2. As part of the application process, the applicant will be provided with instructions on compliance with M.G.L. Chapter 270 Section 6 (sales of tobacco to minors and penalties for violation thereof) and compliance with the Duxbury Board of Health.
3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.
4. The fee for a tobacco sales permit shall be determined by the Duxbury Board of Health. All such permits shall be renewed annually on January 1.
5. A separate permit is needed for each location.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

**4.10 FREE DISTRIBUTION:**

No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes or any agent or employee of such person shall distribute a cigarette or other tobacco or smoking product free to any person.

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**4.11 PACKAGING:**

No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed any cigarette package that contains fewer than twenty cigarettes.

**4.12 SELF-SERVICE DISPLAYS:**

All self-service displays of tobacco products are prohibited. The only exception is self-service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

**4.13 TOBACCO PRODUCT VENDING MACHINES:**

No person shall distribute or sell tobacco products by the use of a vending machine unless the vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present or permitted to enter at any time.

**4.14 ENFORCEMENT OF SECTION 4.08:**

1. In the case of the first violation, the holder of the permit shall be required to have all of the employees of the establishment directly involved in the sale of tobacco products, attend a tobacco sales educational program approved by the Board of Health and may be fined. In the case of a second violation within a 2 year period, the holder of the permit shall have the "permit for location and sales" suspended for a period of ten (10) consecutive days and the permit holder may be fined. In the case of a third violation in a two-year period, the permit holder shall have the "permit for location and sales" suspended for no less than thirty (30) days up to one (1) year and may be fined.

The penalty for violations, by non-criminal complaint pursuant to the provisions of MGL Chapter 40, Section 21D, of any of the aforementioned Board of Health Rules and Regulations shall be \$25 for the first offense; \$50 for the second offense; \$100 for the third offense and \$200 for the fourth and each subsequent offense.

2. The Duxbury Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing date which shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an 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 Duxbury Board of Health after a hearing may suspend the tobacco sales permit. . All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

**4.15 ENFORCEMENT OF SECTIONS 4.09, 4.10, 4.11, 4.12, 4.13:**

Any person that violates these sections shall be subject to a fine. Each day of non-compliance shall constitute a separate violation.

The penalty for violations, by non-criminal complaint pursuant to the provisions of MGL Chapter 40, Section 21D, of any of the aforementioned Board of Health Rules and Regulations shall be \$25 for the first offense; \$50 for the second offense; \$100 for the third offense and \$200 for the fourth and each subsequent offense.

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**4.16 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 section being in force.

**4.17 PUBLIC EDUCATION:**

The Board of Health may engage in a continuing program to explain and clarify the purposes and requirements of the regulations to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such programs may include publication or approval of a brochure for affected businesses and individuals explaining the provisions of this regulation. The

Duxbury Board of Health will respond to any requests from tobacco retailers for assistance on training sales personnel.

**EFFECTIVE DATE:**

Implementation of this regulation will occur on APRIL 1, 1999, except where otherwise noted.