



TOWN OF ACUSHNET

BOARD OF HEALTH

Tobacco Control Regulation

Governing Smoking in Workplaces, Public Places,
Membership Associations and Food Establishments

Section 1 – Purpose

Whereas, conclusive evidence exists that tobacco Smoke Causes cancer, respiratory and cardiac disease, negative birth outcomes, irritations to the eyes, nose, and throat; and

Whereas, the harmful effects of tobacco and non-tobacco Smoke are not confined to smokers but also cause severe discomfort and illness to non-smokers; and

Whereas, Environmental Tobacco Smoke (ETS), a known human carcinogen, includes both exhaled Smoke and the side stream Smoke from burning tobacco products and causes the death of 53,000 Americans each year; and

Whereas, the Commonwealth of Massachusetts enacted the Smokefree Workplace Law, M.G.L. c270, sec 22, effective July 5, 2004; and

Whereas, the Board of Health of the Town of Acushnet has a duty to safeguard the life and health of individuals of all ages in the community by taking a strong stand on Smoking and Second-Hand Smoke;

Now Therefore, the Board of Health establishes this regulation to protect and improve the public health and welfare by prohibiting Smoking in all Workplaces, Public Places, Membership Associations and Food Establishments in Acushnet, except as provided herein.

Section II – Authority

This regulation is promulgated under the authority granted to the Board of Health under Massachusetts General Laws c. 111, sec 31 and c. 270, sec. 22,

Section III – Definitions

This regulation incorporates the definitions provided in M.G.L. c. 270, sec. 22 and the following, which shall have the meanings respectively ascribed to them in this section;

Board: The Acushnet Board of Health

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.

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.

Enclosed: A space bounded by walls, with or without windows or fenestrations, and enclosed by one or more doors.

Food Establishment: A Food Service Establishment and/or Retail Food Establishment permitted by the Board.

Food Service Establishment: A place where food and/or beverages are prepared and intended for individual portion service, and includes the site at which individual portions are poured and/or provided, that is in a covered area and/or located within a permanent structure. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food and/or beverages.

Membership Association: 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. Except for a religious place of worship or instruction, 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.

Outdoor seating: Any outside area of an establishment that is under the control of the management of said establishment.

Outdoor space: An outdoor area, open to the air at all times, not enclosed by a wall or side covering(s), and not including a fixed or flexible protective covering such as an awning or canopy which may adjoin a building or similar structure on no more than two sides.

Permit Year: January 1 to December 31.

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, restaurant, Membership Association or retail store, or the business Agents or designees of any of the foregoing,

Premises: The entire property located at the Town address of a particular company, corporation, organization, building, establishment, business, restaurant, Membership Association or retail store, including without limitation, and Private Assembly Rooms thereon.

Private Assembly Room: That enclosed area/room within a hotel, motel, restaurant, bar, Membership Association or function hall that is primarily used for rental or use by the public for private functions, parties, banquets or conferences.

Public Place: Any building, facility, vehicle or vessel owned, leased, operated or occupied by the Town, 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 sec. 11A of c. 30A, sec. 23A of c. 39 and sec. 9F of c. 34 of the General Laws, and licensed child-care locations.

Retail Food Establishment: Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes, but is not limited to, supermarkets, grocery stores, convenience stores, and delicatessens.

Retail Tobacco Establishment: 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 and neither possesses nor is required to possess a retail food or a food service permit.

“Second Hand Smoke” or E.T.S: Environmental Tobacco Smoke. A combination of Smoke released from the burning end of a lighted tobacco product as well as exhaled Smoke.

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

Town: The Town of Acushnet

Workplace: An indoor area, structure or facility, or portion thereof, at which one or more Employees perform a service for compensation for an Employer, other Enclosed spaces rented to or otherwise used by the public; except where the Employer has the right or authority to exercise control over the space.

Section IV – Smoking Prohibited

- A.** No person shall Smoke nor shall any Person be permitted to Smoke in any Workplace, Public Place, Food Establishment or Membership Association, including any Outdoor Seating Thereto in the Town, except as otherwise provided in Section V of this regulation.

- B. It shall be unlawful for any Person having control of any Premises upon which Smoking is prohibited by this regulation, or the Business Agent or designee of such Workplace, Public Place, Food Establishment or Membership Association, to permit a violation of this regulation.
- C. Smoking shall be prohibited in all outdoor areas of restaurants, bars, taverns, and any other outdoor place where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the consumers and/or served to consumers.

Section V – Exceptions

Upon submission of a written request and sufficient documentation to the Board, and notwithstanding the provisions of Section IV of this regulation and otherwise consistent with applicable state law, including but not limited to M.G.L., c.270, sec 22, the Board may permit Smoking in the Town:

- A. In a nursing home, licensed pursuant to M.G.L., c.111, sec. 71 under the jurisdiction of the commonwealth holding a Food Establishment permit issued by the Town, provided that:
 - 1. The nursing home apply to the Board for designation of part of it's facility as a residence, and;
 - 2. The nursing home's application delineate the residential portion of it's facility which will be used solely for permanent residents of the facility, wherein no temporary or short-term resident may reside, and which shall not contain an Employee Workspace, such as an office, restroom or other area used primarily by Employees and;
 - 3. All areas in the designated residential area in which Smoking is allowed will be conspicuously designated as Smoking areas and adequately ventilated to prevent migration of Smoke to Non-Smoking areas, and;
 - 4. Said application includes suitable documentation, acceptable to the Board, that the nursing home is the permanent domicile of the residents residing in that portion of its facility, that information on the hazards of Smoking and Second Hand Smoke will be provided to all residents, and that Smoking cessation aids will be available to all residents who use tobacco products, and;
 - 5. The designated residential area is in conformance with the Smoking restriction requirements of M.G.L. c.111 sec. 72X and 105 CMR 150.015 (D)(11)(b), including the clear designation of all residential areas as such, and the requirement that such designation not be altered or otherwise changed without the express written approval of the Board, and;
 - 6. All areas of the nursing home not designated as a residence comply with this section, and;
 - 7. The nursing home makes reasonable accommodations for Employees, residents or visitors who do not wish to be exposed to Smoke, whereupon;
 - 8. Upon compliance with this section, submission of the required documentation, conduct of a satisfactory inspection and Board certification of a designated portion of the facility as a residence, this exception shall be valid for the period of the Permit Year only, unless otherwise suspended or revoked.

9. No fewer than 30 days prior to the expiration of such an exception, the nursing home may apply for renewal of its exception. If the Board does not renew such an exception before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the exception shall be considered to continue in effect until such time as the Board notifies the nursing home of the status of its exception otherwise.
- B. In Outdoor Seating portions of a Food Service Establishment, including but not limited to patios, decks and porches, provided that:
1. Neither food nor beverages are sold nor served there, and;
 2. Said Outdoor Seating portions of the Food Service Establishment are not Enclosed, and;
 3. Except for a fixed or flexible covering such as an awning or canopy which may adjoin an Enclosed Food Service Establishment on no more than two sides, all Outdoor Seating portions of the Food Service Establishment shall be physically separated from said establishment, and;
 4. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to said Outdoor Seating portions of the Food Service Establishment, the openings shall be closed to prevent the migration of Smoke into the Enclosed Food Service Establishment, and;
 5. If doors, windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of Smoke into the Enclosed Food Service Establishment, said Outdoor Seating portions shall be considered an extension of the Enclosed Food Service Establishment and subject to Section IV of this regulation, and;
 6. The Food Service Establishment submits a written request with sufficient documentation for this exception to the Board.
- C. In an Outdoor Space on the Premises of a Workplace or Food Establishment, including but not limited to patios, decks and porches, provided that:
1. Said Outdoor Space is not Enclosed, and;
 2. Except for a fixed or flexible covering such as an awning or canopy which may adjoin the Workplace or Food Establishment on no more than two sides, said Outdoor Space is open to the air at all times and physically separated from an Enclosed workspace to prevent the migration of Smoke into the Workplace or Food Establishment, and;
 3. The Workplace or Food Establishment submits a written request with sufficient documentation for this exception to the Board.
- D. Exceptions shall be valid only when duly issued in writing by the Board, and only for the period of the Permit Year, unless otherwise suspended or revoked.

Section VI – Tobacco Sales to Persons under the Minimum Legal Sales Age Prohibited

No person shall sell, provide or permit the sale or distribution of tobacco products, as defined in G.L. c 270, sec.6, as may be amended, to a person under the minimum legal sales age. Effective December 30, 2018, the minimum legal sales age in Acushnet for all persons, including those persons who attained the age of 18 before December 31, 2018, shall be 21.

Section VII – Posting of Notices

Consistent with M.G.L. c. 270, sec. 22 sec. (g) (4), the owner or his/her Business Agent, having control of the Premises upon which Smoking is prohibited by and under the authority of this regulation, shall post notices conspicuously, so that the signs are clearly visible to all Employees, customers, or visitors while in the establishment, at all points of entry and in every area upon the Premises which state “No Smoking” or that this is a “Smoke-Free Establishment”, or that display 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).

Section VIII – Conflict With Other Laws, Ordinances or Regulations

Notwithstanding the provisions of the foregoing Section IV of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other laws or regulations, including the Smoke-free Workplace Law M.G.L. c. 270, sec. 22 so as to permit Smoking in areas where it is prohibited by that law or such other fire, health or other law or regulation.

Section IX – Penalties

- A. It shall be the responsibility of the Employer to provide a smoke-free environment for all Employees working in an Enclosed Workplace. It shall be the responsibility of the permit holder/owner, or his/her Business Agent to ensure compliance with all provisions of this regulation. A permit holder/owner, Business Agent or other Person in control of any Workplace, Public Place, Food Establishment or Membership Association governed by this regulation, who violates any provision of this regulation, shall be subject to the following:
 - 1. A fine of one hundred dollars (\$100) for the first violation
 - 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).
 - 3. In the case of a third violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for seven (7) consecutive calendar days.

4. In the case of a fourth violation within 24 months of the date of the second violation, including the current violation, a fine of three hundred dollars (\$300) and, if applicable in the case of a permitted Food Establishment, suspension of the establishment's permit for thirty (30) consecutive calendar days.
- B. If an owner, manager or other Person in control of any permitted Workplace, including Food Establishments and Membership Associations governed by this regulation violates this section repeatedly, or demonstrates egregious non-compliance with this regulation, the Board may suspend or revoke its license to operate and shall send notice of said suspension or revocation to the Town Licensing Board and the Massachusetts Department of Public Health.
 - C. Each day on which any violation of these Tobacco Control Regulations exists shall be deemed to be a separate violation.
 - D. Violations of this regulation may be found upon sufficient evidence of Smoking, including but not limited to ashtrays and other smoking materials, extinguished cigar and cigarette butts, etc., and shall not be limited to the discovery of actively burning tobacco and non-tobacco products in a Workplace, Public Place, Membership Association or Food Establishment.
 - E. If applicable, the Board shall provide written notice to a permit holder/owner, or his/her Business Agent of the intent to suspend or revoke a "Food Establishment Permit".
 1. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder/owner, or his/her Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.
 2. Notice of the intent to revoke a permit shall be given by the Board to the permit holder/owner, or his/her Business Agent in writing. The notice shall specify the reason(s) for which the permit is to be revoked and that the revocation shall be imposed at the end of the ten (10) days following service of such notice unless a written request for a hearing is filed with the Board of Health by the permit holder within such ten (10) day period. If no request for a hearing is filed within the ten (10) day period, the permit shall be revoked. If a written request for a hearing is filed within the ten (10) day period, a hearing shall be scheduled no earlier than seven (7) days after the date of said filing. The permit holder/owner, or his/her Business Agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.
 3. If applicable, a permitted establishment will be closed and prohibited from operating during such time that its Food Establishment permit has been suspended or revoked for violation of this regulation.

Section X – Non-Criminal Civil Disposition

Whoever violates any provision of these Tobacco Control Regulations, 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, c.40, sec. 21D or as outlined in c. 270, sec. 22 or by filing a criminal complaint at the appropriate venue.

Section XI – Enforcement

- A. The Board and its designees shall enforce this regulation.
- B. Enforcement may include, but not be limited to, periodic, unannounced inspections of those establishments subject to this regulation.
- C. Any Person who desires to register a complaint under this regulation may do so by contacting the Board.

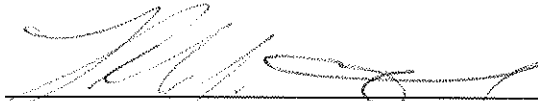
Section XII – Severability


If any provision, clause, sentence, paragraph, or word of this regulation or the application thereof to any Person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared severable.

Section XIII – Effective Date

This regulation was initially effective on November 16, 1995, amended on February 12, 2001 and January 12, 2005. This regulation was further amended on **November 27, 2018** and shall take effect upon publication in summary form in the Legal Notices Section of the Standard Times. Publication Date: 11-30-18

Authorized by the Town of Acushnet Board of Health.


Thomas J. Fortin, Chairman


Robert Medeiros, Clerk


David M. Davignon, Inspector