PART IX - TOBACCO CONTROL REGULATIONS

ARTICLE 1 - TOBACCO CONTROL REGULATIONS

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Section 1. STATEMENT OF PURPOSE

Exposure to environmental tobacco smoke presents a serious and substantial public health risk. There exists conclusive evidence that tobacco products cause cancer, respiratory diseases, various cardiac problems, allergies and irritations to the eyes, oral and nasal cavities are hazardous to persons with compromised immune systems, children and pregnant women. This has been proven for users, non-users and employees who are exposed to tobacco by products. The Provincetown Board of Health has adopted regulations, which will regulate smoking indoors within public places, work places, retail sales premises, restaurants, and prohibit tobacco vending machines.

Section 2. AUTHORITY

The Town of Provincetown pursuant to Massachusetts General Laws Chapter III, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of residents and visitors to Provincetown to read as follows:

Section 3. DEFINITIONS

- A. **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.
- B. Bar area of a restaurant: An area of a restaurant that is devoted to the serving of alcoholic beverages by guests or restaurant patrons and in which the consumption of food is not permitted.
- C. **Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise be in charge of said establishment.
- D. **Employee:** A person who performs services for wages or other consideration.
- E. **Employer:** A person, partnership, association, corporation, trust or other organized group, including the County of Barnstable and any department or agency thereof, or any municipal entity, which utilizes the services of two (2) or more employees.
- F. **Enclosed Space:** Shall be defined consistently with G.L. c. 270, §22, as a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room or hallway.

- G. **Minor:** A person under eighteen years of age.
- H. **Outdoor Space:** Shall be defined consistently with G.L. c. 270, §22, as an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.
- 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 the foregoing.
- J. **Physical barrier:** A structure, while constructed of a variety of materials, such as, wood, glass or Plexiglas, will provide three-quarter enclosure of the designated smoking area, and will extend from the floor to 24 inches or less from the ceiling.
- K. Public Place: An enclosed space that is open to and used by the general public, including but not limited to the following facilities: licensed child care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, lobbies and entranceways accessible to the public; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels, motels, public restrooms; laundromats; hair salons; barbershops; libraries; municipal buildings; museums; retail food establishments; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and any function rooms/halls for public meetings or public social functions. A function room/hall used for private social functions shall not be construed as a public place as long as the sponsor of the private function, and not the owner or proprietor of the facility has control over the seating arrangements.
- L. **Private club:** A non-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.
- M. **Restaurant:** Any establishment serving food for consumption on the premises, which maintains tables for the use of its customers. This includes public and employee cafeterias.
- N. **Retail Food Establishment:** Any establishment commonly known as a supermarket or grocery store in which the primary activity is the sale of food items for off-premise consumption.
- O. **Retail Store:** Any establishment selling goods or articles or personal services to the public.

- P. **Self Service Display:** Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.
- Q. **Smoking:** The lighting of, or having in one's possession any lighted cigarette, cigar, pipe, or other tobacco product.
- R. **Tobacco Vending Machine:** A mechanical or electrical devise, which dispenses tobacco products by self-service, with or without the assistance of a clerk or operator.
- S. **Workplace:** Any area within a structure or portion thereof in 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 4. PROHIBITION OF SMOKING IN PUBLIC PLACES

- A. As of October 1, 2002, smoking shall be prohibited in all public places, restaurants, bars bar areas of restaurants (100%), including all Outdoor Spaces of restaurants, bar area of restaurants and bars, except as set forth in section B(3) below. See definitions in Section 3.
- B. Areas where smoking is NOT prohibited are listed below:
 - 1. Private clubs
 - 2. Hotel and motel conference rooms/meeting rooms and public and private assembly rooms, including restaurants, while these facilities are being used for private functions.
 - 3. The Outdoor Space of a restaurant, bar, or bar area of a restaurant, provided that all three of the following conditions are met:
 - a. the Outdoor Space complies with the requirements of G.L. c. 270, §22(e) and 105 CMR 661.200;
 - b. there is no food or beverage service to patrons in the Outdoor Space; and
 - c. the Board of Health has certified in writing that conditions a and b have been met. Such certification may be made, at the request of the applicant, in conjunction with the issuance of an annual Food Service Permit for the establishment, provided that proper documentation and opportunity for inspection is provided to Board of Health staff.

Section 5. PROHIBITION OF VENDING MACHINES

No vending machines for dispensing cigarettes or other tobacco products are allowed in the Town of Provincetown (see Provincetown General By-Laws, Chapter 11, Article 6).

Section 6. WORKPLACE

- A. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas.
- B. Each employer may specifically designate enclosed areas in which employees may smoke, provided, however, that comparable nonsmoking areas of adequate size and capacity are available and provided, further, that physical barriers and separate

ventilation systems, vented directly to the outside, are used to segregate smoking areas from nonsmoking areas. Common areas, including hallways, elevators, entranceways, stairwells, restrooms, and waiting areas listed in III.d. 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, shall not knowingly permit a violation of this regulation.

Section 7. 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 8. SALE & DISTRIBUTION OF TOBACCO PRODUCTS

- A. Permit: To monitor compliance of the sale of tobacco products, permits will be issued. No person, firm, corporation, establishment, or agency, shall sell tobacco products within the Town of Provincetown without a valid Tobacco Sales Permit issued by the Town and/or State. 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 Town and/or State.
 - 1. As part of the application process, the applicant will be provided with the Provincetown Board of Health Regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.
 - 2. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
 - 3. A separate permit is needed for each retail establishment selling tobacco.
 - 4. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
 - 5. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
 - 6. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
 - 7. The fee for a tobacco sales permit shall be determined by the Provincetown Board of Health. All such permits shall be renewed annually by December 31.
- B. 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 person shall verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is suggested for any person who appears to be under the age of 27. 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 to 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.

- C. Distribution of Tobacco Products: No person shall distribute, or cause to be distributed, any free samples of tobacco products. Such endeavors include, but are not limited to, product "giveaways," or distribution of a tobacco product as an 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.
- D. 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. All self service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

Section 9. VIOLATIONS AND PENALTIES

- A. Violations of this smoking regulation will be subjected to the provisions of the Regulation of the Town of Provincetown regarding non-criminal disposition, according to the Town of Provincetown, Board of Health Regulations, Part VIII, Article 2.
- B. Any person who knowingly violates any provision of this regulation, or who 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 up to \$50 for each offense.
- C. 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:
 - 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 18 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the tobacco sales permit shall be suspended for seven (7) consecutive business days.
 - 3. In the case of three or more violations occurring within 18 months of the current violation, a fine of three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days or to a time set my the Board of Health.
 - 4. A violation shall be considered a first violation in cases where no violation has occurred during the previous 18 months, even thought there may be previous violations on record.

- 5. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales permit for thirty (30) consecutive business days.
- 6. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.
- 7. The Provincetown Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent 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 Provincetown 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.
- 8. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.
- D. Persons, firms, corporations, or agencies selling tobacco products without a Tobacco Sales Permit shall be punished by a fine of \$300 per day for each day of such violation and/or suspension of the tobacco sales permit.
- E. In addition to the remedies provided by 9.B., 9.C. and 9.D. 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 subsection may apply for injunctive relief to enforce the provisions of this subsection in any court of competent jurisdiction.

Section 10. 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 11. OTHER APPLICABLE LAWS

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 Town of Provincetown, General By-Law 13-3-1-a, Enforcement, Non-Criminal Disposition; Massachusetts General Laws, Chapter 270, Sections 6, 7, 21.