

Rules and Regulations of the Lincoln Board of Health

Chapter 4 - Tobacco Control

4.1: Purpose

The purpose of this regulation is to control the sale of tobacco or nicotine delivery products to minors and to limit the exposure of the public to environmental tobacco smoke.

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning cigarettes, causes the death of 53,000 Americans each year (McGinnis JM, Foege W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212); and whereas in 2000, the Public Health Service's National Toxicology Program listed environmental tobacco smoke as a known human carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997), now, therefore, the Board of Health of the Town of Lincoln recognizes the right of those who wish to breathe smoke free air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in public places.

4.2: Authority

This regulation is adopted under M.G.L. Ch. 111, s. 31, which gives Boards of Health the authority to make reasonable health regulations.

4.3: Severability

Each section, paragraph, sentence, clause, phrase and any other portion of this regulation shall be construed as separate to the end that if any portion thereof shall be held invalid for any reason, then the remainder of the regulation shall remain in full force and effect.

Notwithstanding the provisions of the section 4.5(C) of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

4.4: Definitions

"Bar" means 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 of Health" means the legally constituted Board of Health for the Town of Lincoln, or its authorized agents or representatives.

"Business Agent" means an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

"Employee" means any natural person who performs services for an employer.

"Employer" means a natural person, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Lincoln or any agency thereof, which utilizes the services of one (1) or more individual employees.

"Health Care Facility" means any office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

"Indoor Sports Arena" means any sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar recreational facilities where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption. Nicotine delivery products include, but are not limited to, e-cigarettes. Nicotine delivery products do not include products approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

"Person" means 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 any of the foregoing.

"Private Social Function" means a social gathering associated with a single purpose that is not open to the public and is under the control of the host, hostess rather than the proprietor, manager, such as a wedding reception.

"Public Place" means any building or facility owned, leased, operated or occupied by the municipality, 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.

"Public Transportation" means buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the town including indoor platforms by which such means of transportation may be accessed.

"Restaurant" means 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 for on-premises consumption, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

"Retail Food Store" means any establishment commonly known as a supermarket, grocery store, bakery, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption.

"Retail Store" means 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 retail food stores. "Retail store" shall not include restaurants as defined herein.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.

"Town" means the Town of Lincoln.

"Workplace" means any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer (including the personal residence of the employer during those hours when used as a place of employment).

4.5: Environmental Tobacco Smoke

(A) Posting Notice of Prohibition - Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Board of Health 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) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Board of Health.

(B) Smoking Prohibited - 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 Business 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, restaurants, retail stores, and workplaces except as otherwise provided in section 4.5(C) of this regulation.

Additionally, no person shall smoke in any place in which a sign conforming to the requirements of section 4.5(A) of this regulation is posted. No person shall remove a sign posted under the authority of section 4.5(A) of this regulation.

(C) Exceptions - Notwithstanding the provisions of section 4.5(B) of this regulation, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except those portions used as a child care or health care office when operating as such.

- (2) Hotel and motel rooms rented to guests that are designated as smoking rooms. The rooms so designated shall be posted with signage indicating that smoking is allowed therein. The number of rooms that are designated as smoking and the number designated as non-smoking must be submitted in writing to the Board of Health. No changes in room designation can take place without prior written approval of the Board of Health.
 - (3) Hotel and motel conference/meeting rooms and completely enclosed private assembly rooms while these places are being used for private social functions.
 - (4) Private or semiprivate rooms of nursing homes and long term care facilities, which are separately ventilated, occupied by one (1) or more patients, and all of whom are smokers who have requested in writing to be placed in rooms where smoking is permitted.
 - (5) Retail tobacco stores, which are primarily for the sale of tobacco or nicotine delivery products and paraphernalia, in which the sale of other products is merely incidental, prohibit minors from entering the establishment and are not required to possess a retail food permit.
- (D) Enforcement - This regulation shall be enforced by the Board of Health and its designees. One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate an investigation. Any fines imposed under the provisions of this regulation shall enure to the Town of Lincoln for such use as the town may direct.

4.6: Sale of Tobacco or nicotine delivery products

- (A) Tobacco Sales . No retailer may sell tobacco or nicotine delivery products to any person younger than twenty one (21) years of age. Each retailer shall verify by means of photographic identification containing bearer's date of birth that no person purchasing the product is younger than 21 years of age. No such verification is required for any person over the age of twenty-six (26).
- (B) Training - Anyone who sells tobacco or nicotine delivery products to a minor, the store owner or manager and staff known to be in the immediate area of the sale at the time of the sale shall attend a training session on tobacco sales. If a tobacco retailer fails to attend a training or fails to pay a fine as required by Rules and Regulations of the Lincoln Board of Health, Chapter 1, then the Board of Health shall hold a hearing to determine if the Tobacco Sales Permit for that establishment will be suspended for the following periods:
- (1) Three (3) days for the first offense,
 - (2) Five (5) days for the second offense, and
 - (3) Ten (10) days for the third offense
- (C) Violations - If a tobacco retailer sells tobacco or nicotine delivery products to minors on more than three occasions within three years of the last violation, the Board of Health

shall hold a hearing to determine if the following penalties will be imposed:

- (1) For selling tobacco or nicotine delivery products to minors on more than three occasions within three years of the last violation, prohibit a retail establishment from selling tobacco or nicotine delivery products for a period of six months by suspending its Tobacco Sales Permit and/or denying the renewal or issuance of a Tobacco Sales Permit, or
 - (2) For selling tobacco or nicotine delivery products to minors on five or more occasions within three years of the last violation, prohibit a retail establishment from selling tobacco or nicotine delivery products for a period of twelve months by suspending its Tobacco Sales Permit and/or denying the renewal or issuance of a Tobacco Sales Permit.
- (D) Posting State Law. In conformance with Massachusetts General Laws, 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 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 4 feet or greater than 9 feet from the floor. For all other cash registers that sell cigarettes, a notice shall be attached which is no smaller than 9 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 no less than 4 feet or more than 9 feet from the floor.
- (E) Self-Service Displays. Self-service displays of tobacco or nicotine delivery products, from which individual packages may be selected by the customer are prohibited. Tobacco or nicotine delivery products must be located on, over or behind the check-out counter and must be obtained by the sales clerk. Multipacks or cartons must be within 10 feet and in plain view of the regular location of a person designated to supervise the purchase of tobacco or nicotine delivery products from the display. Self-service sales of cigarettes from mobile food units are prohibited.
- (F) Sales Personnel. No person or entity selling tobacco or nicotine delivery products shall allow anyone to sell cigarettes or other tobacco or nicotine delivery products until such employee reads the Board of Health regulations and state laws regarding sale of tobacco and signs a sworn statement, a copy of which will be placed on file in the office of the Board of Health, that (s)he understands and will uphold the regulations.
- (G) Free Distribution/Sampling. No person or entity shall, except at full retail price and with a Tobacco Sales Permit, in or upon any part of the streets, parks, public grounds, public buildings, or other public places within the Town of Lincoln distribute any products containing tobacco for any promotional, as a premium in a game or other commercial purpose.

- (H) Reduced Pricing. No free or nominal cost tobacco or nicotine delivery products shall be distributed or sold within the Town of Lincoln. No person or entity shall distribute any coupons or vouchers redeemable for tobacco or tobacco or nicotine delivery products for free or at a nominal cost within the Town of Lincoln. Such restrictions shall not apply to coupons in magazines, newspapers, other periodicals or affixed to packaging.
- (I) Vending Machines. No person shall install or maintain a vending machine to distribute or sell tobacco or nicotine delivery products within the Town of Lincoln.
- (J) Packaging. Sale or distribution of tobacco or nicotine delivery products in any form other than an original factory-wrapped package is prohibited. No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes.

4.7: Tobacco Sale Permits

- (A) Permit Required - No person, firm, corporation, establishment or agency shall sell tobacco or nicotine delivery products at retail within the Town of Lincoln without a Tobacco Sales Permit issued by the Board of Health. An application for a Tobacco Sales Permit shall be filed within 30 days following the effective date of this Board of Health regulation on a form provided by the Lincoln Board of Health.
- (B) Permit Posted - The Tobacco Sales Permit must be posted in conspicuous view of the public.
- (C) Non-transferable - Each location shall require a separate Tobacco Sales Permit. Tobacco Sales Permits are non-transferable.

4.8: Effective Date

This regulation was adopted by the Lincoln Board of Health on November 19, 2014. Pursuant to the authority granted by MGL Ch 111, sec 31 and MGL Ch 11 sec 127, and this regulation will become effective January 1, 2015