



# DUDLEY BOARD OF HEALTH

## Clean Air Regulations

### SECTION I: Statement of Purpose

Whereas conclusive evidence exists that tobacco causes cancer (U.S. Surgeons General, 1986), 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 (ETS), which includes both exhaled smoke and the side stream smoke from burning cigarettes, causes the death, by lung cancer alone, of 3,000 Americans each year (CAL EPA, 1997); and whereas environmental tobacco smoke is a Class A carcinogen (CAL EPA 1997) that is similar to radon and asbestos with no known safe levels of exposure; now, therefore, the Town of Dudley recognizes the right of those who wish to breathe smoke-free air shall have priority over the desire to smoke and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in certain public places.

### SECTION II: Authority:

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

### SECTION III: Definitions:

For the purposes of the regulation, the following definitions shall apply:

**Bar:** An establishment whose business is devoted to the serving of alcoholic beverages for the consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

**Bar area of a restaurant:** An area of a restaurant that is devoted to the serving of alcoholic beverages for the consumption by guests or restaurant patrons on the premises and which the serving of food is only incidental to the consumption of such beverages.

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

**Pouring license:** A Section 12 License, approved by the Massachusetts Alcoholic Beverage Control Commission that permits the sale of alcoholic beverages to be drunk on premises.

**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, banks, laundromats, auditoriums, inns, hotel and motel lobbies, staircases, halls, exits, entrance ways, 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.

**Retail Store:** Any establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, any goods, wares, merchandise, or articles, including supermarkets and grocery stores.

**Seating capacity:** The capacity designed on the occupancy permit of the food service establishment.

**Smoking:** Inhaling, exhaling, burning or carrying any lighted tobacco product.

**Ventilation system:** A mechanical system to remove tobacco smoke and exchange inside air by bringing in fresh air. Particulate air cleaners or filtration systems are not considered a ventilation system

### SECTION IV: Smoking prohibited:

No person shall smoke nor shall any person be permitted to smoke in any of the following places as defined herein: restaurants, retail stores, supermarkets, grocery stores, polling places or public places. The use of tobacco products is also prohibited within school buildings and facilities or on school grounds and school buses (MGL Chapter 71, Section 37H).

### SECTION V: Election for coverage by private facilities:

The owner, manager or other person in charge of a building or facility not covered by Section 4 of this regulation may elect to have provisions of Section 4 of this regulation apply by so notifying the Board in writing and by posting signs prohibiting smoking as provided in Section 6 of this regulation.

**SECTION VI: Posting notice of prohibition:**

Every person having control of premises upon which smoking is prohibited by and under the authority of Section 4 of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international sign "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

**SECTION VII: Smoking where notice of prohibition posted:**

No person shall smoke in any place in which a sign conforming to the requirements of Section 4 of this regulation is posted. No person shall remove a sign posted under the authority of Section 4 of this regulation.

**SECTION VIII: Exceptions:**

Notwithstanding the provisions of Section 4 and 5 of this regulation, smoking may be permitted in the following places and/or circumstances:

Hotel and motel rooms that are rented to guests that are designated as smoking rooms;

Hotel and motel conference/meeting rooms and private and public assembly rooms while these places are being used for private functions;

The Bar area of a restaurant that holds a pouring license, provided that as of July 1, 2000 it is (a) separated from the non-smoking area of the restaurant by location in a separate room or by means of physical barriers that completely enclose the bar area of the restaurant, and is (b) served by a ventilation system that is separate from the ventilation system that serves the non-smoking portion of the restaurant so as not to interfere with smoke-free air of the non-smoking area of the restaurant;

Bars that permit smoking must prohibit persons under 18 from entering and must conspicuously post signs approved and supplied by the Board at the entrance prohibiting persons under eighteen (18) and advising patrons of the health hazards of environmental tobacco smoke;

Retail tobacco stores which are primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental;

Public and private nursing homes must have designated no smoking sections in common areas, including lobbies, cafeterias, conference rooms, and employee lounges (MGL Chapter 270 Section 72);

Smoking is restricted to designated smoking areas in any waiting area of a health care facility, group child care center, or family day care center (MGL Chapter 270 Section 22 as amended);

**SECTION IX: Penalties, Fines, Suspension and/or Suspension:**

It shall be the responsibility of the owner, manager, or food services permit holder and/or his or her agent(s) to ensure compliance with all sections of this regulation pertaining to their place of business. The owner, manager, or food service permit holder and/or his or agent(s), or persons involved in violation of any of the provisions of this regulation shall receive:

In the case of the first violation, any person(s) not in compliance with the provisions of this regulation shall receive a written warning

In the case of the second violation within one (1) year of the date of the first violation, any person(s) not in compliance with the provisions of this regulation shall be fined one hundred dollars (\$100.00).

In the case of a third or any subsequent violations within one (1) year of the date of the first violation, the owner, manager, or permit holder and/or his or her agent(s), or persons not in compliance with the provisions of this regulation shall be fined two hundred dollars (\$200.00) and any permit issued by this Board shall be suspended for seven (7) consecutive business days.

The Board of Health of the Town of Dudley shall provide written notice to the owner, manager, or permit holder and/or his or her agent(s), of the intent to suspend any permit issued by this Board. 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 permittee shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.

### **SECTION X: Non-Criminal Disposition:**

Whoever violates any provision of this regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day on which any violation exists shall be deemed to be a separate offense.

Penalty:                               \$100.00 for the second offense  
  \$200.00 for the third and any subsequent offense

### **SECTION XI: Enforcement:**

Enforcement of this regulation shall be implemented by the Dudley Police Department, the Dudley Board of Health, or their designated agent(s).

Any citizen who desires to register a complaint of non-compliance under the regulation may do so by contacting the Dudley Police Department, the Dudley Board of Health, or their designated agent(s).

### **SECTION XII: Conflict with other laws or regulations:**

Notwithstanding the provisions of the foregoing Section 8 of this regulation shall be deemed to neither amend nor 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.

### **SECTION XIII: Severability:**

If any provision, clause, sentence or paragraph 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 article which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

### **SECTION XIV: Effective Date:**

These regulations shall be effective as of July 1, 2000.

Chairperson      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      Leslie Manthos,  
                                 Adelina Healy                                James Brinker

