

# TOWN OF YARMOUTH

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## BOARD OF HEALTH

### **REGULATION PROHIBITING SMOKING AT FOOD SERVICE ESTABLISHMENTS, LOUNGES AND BARS Yarmouth Board of Health**

#### **SECTION I - FINDINGS AND PURPOSE**

**WHEREAS**, environmental tobacco smoke is a leading public health problem in the Town of Yarmouth and throughout the United States; and,

**WHEREAS**, there exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose and throat of both smokers and nonsmokers; and,

**WHEREAS**, the Environmental Protection Agency (EPA) has designated environmental tobacco smoke to be a Class A carcinogen, similar to radon and asbestos, with no known safe level of exposure; and,

**WHEREAS**, children, the elderly, individuals with cardiovascular disease, individuals with impaired respiratory function and asthmatics are among those people who are particularly susceptible to the harmful effects of inhaling environmental tobacco smoke,

**THEREFORE**, pursuant to Massachusetts General Laws, Chapter 111, Section 31, the Town of Yarmouth Board of Health adopts the following regulation, to be adopted for the express purpose (1) to protect the public health and welfare by restricting smoking in restaurants; and, (2) to assure smoke free air for nonsmokers; and, (3) to recognize that the need to breathe smoke free air shall have priority over the desire to smoke in an enclosed public area.

#### **SECTION II - AUTHORITY**

The Town of Yarmouth, pursuant to Massachusetts General Laws, Chapter 111, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents

### **SECTION III - DEFINITIONS**

- A. Bar/Lounge - An establishment with a food service license, devoted primarily to serving alcoholic beverages for consumption by guests on the premises, in which the consumption of food is only incidental to the consumption of such beverages.
- B. Employee - A person who performs services for wages or other consideration.
- C. Employer - A person, partnership, association, corporation, trust or other organized group, and any municipal entity which utilizes the services of two (2) or more employees.
- D. Food Service Establishment - An establishment having one (1) or more seats in which food is served to the public that is a covered area and/or located within a permanent structure. A food service establishment is further defined as an establishment devoted primarily to serving food for consumption by guests where the consumption of alcoholic beverages is only incidental to the consumption of food.
- E. Function Room/Hall - A separate, enclosed room used for private functions within a food service establishment. A function room/hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements is exempt from this regulation.
- F. Smoking - The lighting of or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product.
- G. Tobacco - Cigarettes, cigars, snuff, chewing tobacco or tobacco in any of its forms.
- H. Window - Any window that can be opened.

### **SECTION IV - PROHIBITION OF SMOKING IN FOOD SERVICE ESTABLISHMENTS, LOUNGES AND BARS**

Smoking shall be prohibited in all food service establishments, lounges and bars as of April 3, 2000.

### **SECTION V - SMOKING PERMITTED**

Notwithstanding Section IV above, smoking may be permitted in the following places or circumstances:

- A. Function rooms/halls used for private social functions provided that the sponsors of the private functions have control over the seating arrangements; and
- B. Outdoor seating areas of food service establishments provided that:

1. Such an outdoor area is not enclosed except for the one side which adjoins the establishment and
2. The smoking section of an outdoor seating area shall not be located within ten (10) feet of any doorway and/or window of the establishment.

## **SECTION VI - POSTING**

Every person having control of a premises 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 VII - VIOLATIONS AND PENALTIES**

A. Violations of this smoking regulation will be subjected to the provisions of the Town of Yarmouth General Ordinance regarding noncriminal dispositions.

B. Any person who knowingly violates any provision of this regulation or who smokes in a food service establishment, bar or lounge as defined in this regulation in which a "Smoking Prohibited By Law" sign or its equivalent is conspicuously displayed shall be punished by a fine of up to fifty dollars (\$50.00) for each offense.

C. Any proprietor(s) or other person(s) in charge of a food service establishment, lounge and/or bar who fail(s) to comply with these regulations shall be subject to the following actions for each offense:

1. A warning shall be issued for a first offense. A fine of up to one hundred dollars (\$100.00) may be issued for the second offense, up to two hundred dollars (\$200.00) for a third offense, up to three hundred dollars (\$300.00) for a fourth offense, and up to three hundred dollars (\$300.00) for any subsequent offense; and

2. No provision, clause or sentence of this paragraph of this regulation shall be interpreted as prohibiting any Town of Yarmouth department or board from suspending or revoking licenses or permits issued by and within the jurisdiction of such departments for repeated violations of this regulation.

D. Persons, firms, corporations or agencies selling tobacco products to minors or selling tobacco products without a tobacco sales permit shall be punished by a fine of not more than

three hundred dollars (\$300.00) per day for each day of such violation and/or suspension of the tobacco sales permit.

E. In addition to the remedies provided by VI-B, VI-C and VI-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 VIII - 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.

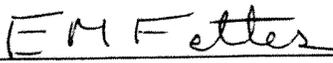
#### **SECTION IX - OTHER APPLICABLE LAWS**

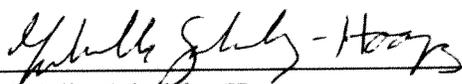
A. The Board of Health or its enforcement officer(s) shall enforce this regulation. Any violation of these regulations may be enforced by the provisions of M.G.L., Chapter 40, Section 21D et seq. non-criminal disposition.

B. Any citizen who desires to register a complaint of noncompliance under this regulation may do so by contacting the Yarmouth Health Department.

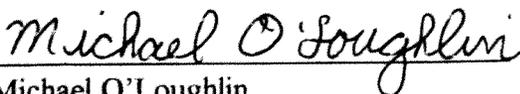
#### **SECTION X - EFFECTIVE DATE**

These regulations shall be effective as of April 3, 2000.

  
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Edward Fettes, Chairman

  
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Gabrielle Sakolsky-Hoop

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Joan E. Sullivan, Vice Chair

  
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Michael O'Loughlin

  
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Robert Brown, Clerk