



**Regulation passed by the
Boston Public Health Commission**

This regulation was promulgated on March 19, 1998

RESTAURANT SMOKING RESTRICTIONS

After having reviewed the record of testimony and public commentary, the Boston Public Health Commission arrives at the following findings:

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Boston 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 non-smokers; and,

WHEREAS, Environmental Tobacco Smoke causes the death of more than 53,000 Americans each year; 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,

NOW THEREFORE the Boston Public Health Commission enacts the following regulation, to be adopted for the express purpose (1) to protect the public health and welfare by restricting smoking in restaurants; (2) to protect smoke-free air for non-smokers; 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 I: Definitions

Bar: An establishment with a current license issued by the City of Boston to serve alcohol whose business is primarily 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.

Bar Area of a Restaurant: That section of a restaurant which is primarily dedicated to the serving of alcoholic beverages. Such an area cannot exceed 33% of the establishment's permitted seating capacity.

Employee: Any individual who performs services for an employer in return for wages or profit or any individual who volunteers his or her services.

Employer: Any individual, partnership, association, corporation, trust or other organization, including any public or private authority or municipal or other governmental agency, which regularly uses the services of two (2) or more employees.

Private Assembly Room: that area of a hotel, motel, restaurant, bar or function hall which is primarily used for rental by the public for functions, parties or banquets

Restaurant: Any coffee shop, cafeteria, sandwich stand, private and public cafeterias, or other eating establishment which gives or offers food for sale to the public, guests or employees, as well as the kitchens in which said food is prepared on the premises for serving elsewhere, including catering facilities.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or any form.

Smoking Bar: An establishment whose business is primarily devoted to the selling of tobacco products for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such products. An establishment which serves full meals cannot be considered a "Smoking Bar" for the purposes of this regulation. An establishment which serves appetizers and snacks may be considered a "Smoking Bar" for the purposes of this regulation.

Section II -- Restaurants

A. Areas where smoking prohibited

No person shall smoke, nor shall any person be permitted to smoke in the City of Boston in any restaurant, as defined in the definition section of this regulation.

B. Election for Coverage by Private Facilities

The owner, manager, operator or other person in charge of a building or facility which is not covered by paragraph A above, may elect to have the provisions of this Section of this regulation apply by so notifying the Board in writing, or by posting signs prohibiting smoking as provided in paragraph C of this section.

C. Posting Notice of Prohibition

Every facility or establishment in which smoking is prohibited by and under the authority of this section shall have conspicuously posted upon the premises "No Smoking" signs 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).

1. No person shall smoke in any place in which a sign conforming to the requirements of paragraph C of this section.
2. No person shall alter or deface a sign posted under authority of paragraph C of this section.

D. Smoking Permitted

Notwithstanding paragraph A of this section, smoking may be permitted in the following places or circumstances:

1. Hotel and motel conference rooms and private assembly rooms while these places are being used for private functions;
2. Bars, as defined in the definition section of this regulation;
3. The Bar Area of a Restaurant, as defined in the definition section of this regulation, provided that:

- a. the bar area shall not include any common area of the premises to which a non-smoker may need access, including but not limited to waiting areas, restrooms, and access routes thereto;
 - b. the perimeter of such area is separated by:
 - i. a floor-to-ceiling physical barrier; or,
 - ii. is at least six (6) feet from the perimeter of any area primarily dedicated to the service of food;
 - c. such area is conspicuously marked with signs that warn patrons of the dangers of environmental tobacco smoke;
 - d. such area does not exceed 33% of the establishment's permitted seating capacity, and;
 - e. No person under the age of eighteen (18) shall be seated in such area.
4. Smoking bars, provided such establishments prohibit entry to persons under the age of eighteen (18) at all times, and that such establishments conspicuously post signs at all entrances which warn patrons of the dangers of environmental tobacco smoke.
 5. The outdoor, or sidewalk seating, portions of a restaurant, provided that such outdoor section is not enclosed except for the one side which adjoins the restaurant.

E. Conflict with Other Laws, Ordinances, or Regulations

1. 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.
2. Nothing in this regulation shall be deemed to preempt the further limitation of smoking in the City of Boston by any local regulatory body within the limits of its authority and jurisdiction.

F. Violations

1. Any person, business or entity which violates any provision of this Section of this regulation shall be subject to a fine of:
 - a. Three hundred dollars (\$300) for the first offense;
 - b. Five hundred dollars (\$500) for the second of two offenses committed within a twelve month period;
 - c. One Thousand dollars (\$1000) for the third or more of three or more offenses committed within a twelve month period.
2. Each day a person, business or entity operates in violation of any provision of this Section of this regulation shall be deemed a separate offense.
3. No provision, clause or sentence of this paragraph of this Regulation shall be interpreted as prohibiting any City of Boston Department from suspending or revoking licenses or permits issued by and within the jurisdiction of such Departments for repeated violations of this Regulation.

Section III -- Other Provisions

A. Enforcement

1. Authority to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or its designees.

2. Any violation of this regulation may be enforced in the manner provided in M.G.L. Chapter 111, section 187, by the Boston Public Health Commission, its subsidiary programs or its designees.
3. Any fines collected under this regulation shall be used for the enforcement of these regulations and/or for educational programs on the harmful effects of tobacco products.

B. Non-retaliation

No person or employer shall discharge, refuse to hire, refuse to serve, or in any manner retaliate against any employee, applicant or customer because such employee, applicant or customer takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

C. Waivers

Any owner or manager of a restaurant subject to this regulation may apply to the Executive Director of the Boston Public Health Commission for a waiver of any provision of this regulation for a period not to exceed ninety (90) days.

1. All waivers shall be submitted to the Executive Director, or his designee, on an application form provided by the Boston Public Health Commission along with a \$100 non-refundable filing fee.
2. The decision to grant such a waiver shall be in the sole discretion of the Executive Director, based upon his determination that such waiver is in the public interest. In so determining, the Executive Director may take into account, but is not limited to, the following:
 - a. the efforts that the restaurant has made toward compliance with the regulation;
 - b. whether or not the restaurant will be in compliance with all terms of the regulation within ninety (90) days; and,
 - c. whether the granting of the waiver will result in an appreciable danger to the health of the public.
3. No restaurant shall be granted more than one waiver.

D. 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.

E. Effective Date

This regulation shall take effect on September 30, 1998.