

**ARTICLE 8.22
TOBACCO CONTROL**

SECTION 8.22.1 DEFINITIONS

- a. Tobacco - Cigarettes, cigars, snuff or tobacco in any of its forms.
- b. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product.
- c. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco products by self service, with or without assistance by a clerk or operator.
- d. Minor - A person under eighteen years of age.
- e. Employee - A person who performs work or services for wages or other consideration.
- f. Employer - A person, partnership, association, corporation, trust or other organized group, including the Town of Brookline and any department agency thereof, which utilizes the services of three (3) or more employees.
- g. Workplace - Any enclosed area of a structure in the Town of Brookline, at which three or more employees perform services for an employer.
- h. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
- i. Function Room - A separate, enclosed room used exclusively for private functions within a food service establishment.
- j. Bar/Lounge - An area within a food service establishment which is devoted primarily to serving alcoholic beverages for consumption by guests on the premises, and in which the consumption of food is only incidental to the consumption of such beverages.

SECTION 8.22.2 REGULATED CONDUCT

a. Food Service Establishments

(1) All food service establishments shall be 100% nonsmoking except as otherwise specifically permitted under this by-law.

(2) Waiver of nonsmoking provision for bars and lounges -

The owner or operator of a food service establishment containing a bar/lounge may apply for a waiver of the nonsmoking provision of SECTION 8.22.2(1) with respect to the bar/lounge. The application shall state when the waiver shall terminate, provided, always,

that such termination shall not be later than January 1, 2000.

Application shall be made in writing to the Director of Public Health (Director), stating the reasons and justification for the request. Following no less than two weeks public notice, the Director shall conduct a public hearing on the request, at which the owner or operator shall present the request and the basis for the request. After the hearing the Director may grant the requested waiver, provided:

a.the owner or operator has owned or operated the establishment continuously since November 15, 1994;

b.on November 15, 1994, the establishment contained a bar/lounge according to the records of the Town;

c. the number of the seats in the bar/lounge do not exceed 25% of the establishment's total seating capacity;

d. the bar/lounge occupies a separate, enclosed room;

e. the bar/lounge is equipped with a separate ventilation system that provides an air circulation rate of at least 60 cubic feet per minute per person and exhausts air at a rate of at least 110% of supply to produce a negative air environment; and

f.the configuration of the establishment is not such as to require dining patrons to pass through any portion of the bar/lounge when entering or exiting the establishment.

3. The Director of Public Health may adopt regulations providing for the implementation of SECTION 8.22.2(2) of this by-law.

b. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any health care facility, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2)Taxi/Livery services licensed by the Town of Brookline shall provide smoke-free vehicles in accordance with the following schedule:

a.As of 3/1/94, 25% of all vehicles

b.As of 1/1/95, 100% of all vehicles

The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Nonsmoking vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate individual rooms as nonsmoking in accordance with the following schedule:

a. As of 3/1/94, 25% of individual dwelling units or rooms,

b. As of 1/1/95, 50% of dwelling units or rooms,

c. As of 1/1/96, 90% of dwelling units or rooms.

c. Workplaces

1. Every employer shall establish, post and implement a workplace smoking policy and shall, upon request, furnish a written copy of such smoking policy to any employee or to the Director of Public Health. A workplace smoking policy shall include a grievance procedure whereby an employee may seek relief if he/she is exposed to tobacco smoke in the course of his/her work duties. Upon written request by three or more employees, an employer may, but is not required to, designate a "Smoking Area", provided that such a smoking area shall not adversely affect the health and well being of nonsmoking employees or members of the public. An employer may furnish a separate employee lounge for smoking, no larger in floor area or seating capacity than the employee lounge for nonsmoking employees. All smoking in the workplace shall be prohibited on or before January 1, 1995.

2. Workplaces with function rooms must establish and post a workplace policy that states "Employees are not required to work at private functions in which smoking is allowed." Employees who do not want to work at such functions must so inform their employer in writing, and employers must abide by their employees stated wishes in this regard.

3. Hotels must establish and post a workplace policy that states "Employees are not required to work in rooms in which smoking is allowed." Employees who do not want to work in such rooms must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

4. Food service establishments that permit smoking under the waiver provisions of Section 8.22.2 (2) shall establish and post a workplace policy that states: "Employees are not required to work in the bar/lounge.

5. Every establishment in which smoking is permitted pursuant to this Bylaw shall designate all positions that require the employees presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for

employment in a smoking position, in writing, that the position requires continuous exposure to secondhand smoke, which may be hazardous to the employees health.

6. No establishment in which smoking is permitted pursuant to this By-law may require any employee whose effective date of employment was on or November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

7. No establishment in which smoking is permitted pursuant to this Bylaw may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

8. No establishment in which smoking is permitted pursuant to this Bylaw may designate more smoking positions, as a proportion of the total number of service positions, than the number of seats in portion of the establishment in which smoking is permitted bears to the total number of seats legally permitted in the establishment.

9. It is the intent of this Bylaw that a designated smoking position shall not be considered suitable work for purposes of G.L.C. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

10. Each establishment in which smoking is permitted pursuant to this Bylaw shall post, and make available to all job applicants, a statement inviting employees and job applicants to notify the Board of Selectmen regarding any violation of the policies in this section (Workplaces).

SECTION 8.22.3 POSTING REQUIREMENTS

a. Every person having control of a premises where smoking is prohibited by this by-law, 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" shall be deemed as compliance.

b. Food service establishments in which smoking is permitted under the waiver provisions of SECTION 8.22.2(2) shall post in a conspicuous location, at each entrance used by the general public, a notice provided by the Director of Public Health. This notice, which shall not be smaller than 80 square inches nor larger than 120 square inches in overall area, shall state that smoking is permitted in the establishment and contain a warning concerning the risks of environmental tobacco smoke.

SECTION 8.22.4 SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - No person, firm, corporation, establishment or agency shall sell tobacco

products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges.

b. Tobacco Vending Machines - The sale of tobacco products by means of vending machines is prohibited.

c. Distribution of Tobacco Products - No person, firm, corporation, establishment or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. 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.

d. Sales to Minors - No person, firm, corporation, establishment, or agency shall sell tobacco products to a minor.

e. Advertising/Promotion - From and after January 1, 1995, free standing tobacco product displays in retail locations, where a tobacco product is accessible to the public, shall be within twenty feet and the unobstructed view of a check-out or cash register location.

SECTION 8.22.5 VIOLATIONS AND PENALTIES

a. Any person who knowingly violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of not more than \$50 for each offense.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of not more than \$100 for each offense.

c. 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 \$200 per day for each day of such violation.

d. Employees who violate any provision of Section 8.21.2(c) shall be punished by a fine of not more than \$100 per day for each day of such violation.

e. Violations of this by-law may be dealt with in a non-criminal manner as provided in PART X of the Town By-Laws.

SECTION 8.22.6 SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any

section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.