

**SALEM BOARD OF HEALTH
REGULATION #22
WORKPLACE SMOKING BAN**

**(Replacing prior Regulation #22,
“Concerning Prohibiting of Smoking in restaurants and Bars)**

A. Statement of Purpose:

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 tobacco products, 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 City of Salem recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in workplaces.

B. Authority: This regulation is promulgated under the authority granted to the Salem Board of Health under Massachusetts General Laws Chapter 111, Section 31 that “boards of health may make reasonable health regulations.”

C. Definitions: For the purposes of this regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

Business Agent: 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.

Board: The Board of Health of the City of Salem.

City: The City of Salem.

Employee: Any person who performs services for an employer.

Employer: A person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Salem or any agency thereof, which utilizes the services of one (1) or more employees.

Enclosed: A space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

Person: 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 Club: A non-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership and in accordance with 204 CMR 10.02. If a private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined in M.G.L. Ch. 138, section 12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Public place: Any building, facility or vehicle owned, leased, operated or occupied by the municipality, including school buildings or grounds; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, libraries, museums, theaters, banks, Laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public and licensed child-care locations.

Retail Food Store: Any establishment commonly known as a supermarket, grocery store, bakery or convenience store, or any other establishment that offers food items to the public for off-premises consumption.

Retail Store: Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other things.

Retail Tobacco Store: An establishment that neither possesses nor is required to possess a retail food permit; whose primary purpose is to sell or offer for sale tobacco products and tobacco paraphernalia and for which the sale of other products is merely incidental; that maintains a valid permit for the sale of tobacco products issued by the Board of Health; and prohibits the entry of persons under the age of 18 at all times.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.

Workplace: Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer.

D. Smoking Prohibited:

1. Smoking is prohibited in all workplaces and public places except as allowed in Section F. of this regulation.
2. It shall be unlawful for any 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, to permit a violation of this regulation.

E. 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 Salem 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 Salem Board of Health.

F. Exceptions:

Notwithstanding the provisions of Paragraph D 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", provided that at least 75% of the rooms are smokefree at all times. A room so assigned shall have signs posted indicating that smoking is prohibited therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the Board of Health.
3. 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 who are smokers who have requested in writing to be placed in rooms where smoking is permitted.
4. Private clubs that have a cap on all types of memberships; where key access is required for entry; where all employees are members; provided that there shall be no smoking in any part of the building when any part of the building is being used for a function open to the public or when any part of the building is used for a private social function other than club functions and at members-only functions unless the following conditions are met during such a function:

- Smoking occurs only in those area(s) that are members only
- Such an area, or areas, is physically separated from the rest of the building by floor to ceiling walls and self-closing doors
- Members only area is under negative pressure in comparison to function area
- Such an area, or areas, has a separate working ventilation system
- Such an area, or areas, has separate make-up air
- All building code requirements must be met

Private clubs established after the passage of this regulation shall not be considered an exception.

5. A Retail Tobacco Store separated from other establishments by a solid wall or self-closing door, all of whose entry doors bear a sign of dimensions at least 12 inches by 6 inches stating, "No one under the age of 18 is allowed." Retail Tobacco Stores established or sold after the passage of this regulation shall not be considered an exception.
6. Open-air outdoor or sidewalk seating, provided that a) said area is not artificially heated or cooled; b) said area is not enclosed, except for one side which may adjoin the building; c) the outdoor space and the indoor space are, where they adjoin, separated by a solid wall and self-closing doors such that smoke cannot enter the indoor space; and d) customers carry their own food and/or drinks to the area and are not served in this area by wait staff.

G. Violations:

Any employer, or his or her business agent, who 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 Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. It shall be the responsibility of the employer, or his or her business agent, to ensure compliance with all sections of this regulation. The violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00).
2. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200.00).
3. In the case of three or more violations within 24 months of the current violation, including the current violation, a fine of three hundred dollars (\$300.00).

H. Enforcement:

The Board of Health and its designees shall enforce this regulation.

The Board of Health and its designees may inspect an establishment for compliance with this regulation during routine code enforcement inspections and/or during 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.

I. Severability:

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

J. Conflict with Other Laws or Regulations:

Notwithstanding the provisions of the foregoing Paragraph D 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.

K. Effective Date:

This regulation shall be effective as of **January 1, 2004**

As voted by the Board of health on May13, 2003 with a vote of 3 in favor, 1 abstained, and the Chair abstained as is custom except to break a tie.

Amended December 16, 2003 to allow smoking in private clubs with conditions; and in outdoor restaurant areas not served by wait staff with a vote of two in favor, one opposed, the Chair abstained as is custom except to break a tie.

Christina Harrington, Chair

Date