

# Essex Board of Health

## Environmental Tobacco Smoke Regulation

Adopted 06-30-03

### 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 the U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen; now, therefore the Essex Board of Health 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 Essex Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards 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:

**Bar:** An adult-only establishment, including outdoor seating areas, whose business is 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.

**Boat Cruise-** a vessel used or capable of being used as a means of transport on water that offers rides, transportation and/or trips to the public.

**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 Town of Essex.

**Employee:** Any person who performs services for an employer.

**Employer:** A person, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Essex 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.

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**Food Establishments:** Means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.

**Outdoor Seating Area:** Outdoor seating, or sidewalk portions of an affected establishment, used as part of, or in conjunction with the establishment. Such outdoor section may or may not be covered or otherwise enclosed.

**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 not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club, including outdoor seating areas, is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the 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, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

**Private Social Function:** A social gathering associated with a single purpose that is not open to the public and is under the control of the host/hostess rather than the proprietor/manager, such as a wedding reception.

**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, restaurants, bars, private and public clubs, food establishments, public and private social functions, retail food stores, libraries, boat cruises, 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.

**Restaurant:** Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and other food establishments, including outdoor seating areas, which gives or offers food for sale to the public, guests, or employees for on-premises consumption, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

**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.

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

**Sports Arena:** means sports pavilions, gymnasiums, health spas, boxing arenas, billiard parlors, public and semi-public swimming pools, skating rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in or witness sports events.

**Town:** The Town of Essex.

**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, all public places and private clubs.
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 Town of Essex 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 Town of Essex 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 childcare or health care office, or as any business accessible to the public, 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 be smokefree at all times. A room so assigned shall have signs posted indicating that smoking is allowed therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the Board of Health.

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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 whom have requested in writing to be placed in rooms where smoking is permitted.

### **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 nonconfirmed complaint, a written notification of the complaint will be sent to the referenced business.
2. The owner, manager, or other person in charge of a facility, building, vehicle or place regulated in these regulations that violates any of the above sections, shall be fined one hundred (\$100.00) dollars for the first violation.
3. A second violation within 24 months of the date of the first violation, shall result in a fine of two hundred dollars (\$200.00).
4. A third or subsequent violation within 24 months of the date of the second or current violation shall result in a fine of three hundred dollars (\$300.00) and the Essex Board of Health shall provide a hearing, as detailed in Section G.4 of this regulation, to consider suspension of the violator's food permit.
5. The Essex Board of Health shall provide notice of the intent to suspend a food service permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. The Essex Board of Health, after a hearing, may suspend the food service permit for a term of no less than 3 days and not to exceed 7days.

### **H. Enforcement:**

This regulation shall be enforced by the Board of Health and its designees.

One method of enforcement may be 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.

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**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 become effective on November 3, 2003

ESSEX BOARD OF HEALTH:

Sandra Pelkie MacIntyre,  
Chair

Paul Rullo

Karin Staiti Carroll

Date: \_\_\_\_\_