



# City of Peabody Board of Health Regulations

## **Part I. Environmental Tobacco Smoke (ETS) Regulations**

### 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 Peabody recognizes the right of those who wish to breathe smoke free 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 Peabody 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:

**Bar:** An adult-only establishment 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. Revenue generated from the serving of alcoholic beverages must be equal to or greater than eighty percent (80%) of the total combined revenue generated by the service of such beverages and food. Revenue figures to be considered as evidence for the purpose of this regulation are those used in calculating the meal tax amount required to be filed with the Massachusetts Department of Revenue for the preceding year.

**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 Peabody.

**City:** The City of Peabody.

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

**Employer:** A person, partnership, association, corporation, trust, or other organized group of individuals, includes the City of Peabody 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 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 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.

**Bar Area of a Private Club:** An area of a private club that is devoted to the serving of alcoholic beverages for consumption by members on the premises and in which the serving of food is only incidental to the consumption of such beverage.

**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 in which the primary activity is the sale of 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:** Any establishment whose primary purpose is to sell or offer for sale tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental and neither possesses nor is required to possess a retail food permit.

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.

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 all public places.
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.
3. Retail Stores and Malls shall be smoke free at all times.
4. Waiting rooms, hallways, wards and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices shall be smoke free at all times.
5. All areas available to and customarily used by the general public in all businesses and non-profit entities, including but not limited to, attorneys' offices and other offices, banks, Laundromats, haircutting establishments, hotels and motels shall be smoke free at all times.
6. Sports arenas, auditoriums, convention halls, bingo/beano halls, private club halls and their common areas shall be smoke free at all times.
7. Every room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City, shall be smoke free at all times.
8. Lobbies, hallways, stairways and other common areas in lodging establishments, restaurants, apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities, and multi-unit commercial facilities shall be smoke free at all times.

9. Polling Places shall be smoke free at all times.

E. 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.
2. Hotel and motel rooms rented to guests that are designated as "smoking rooms", provided that at least 75% of the rooms are smoke free 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.
3. The bar area of a private club, with active locations in Peabody at the time of the enactment of this regulation, provided that as of (effective date) it is (A) separated from the non-smoking area of the private club by location in a separate room or by means of physical barriers that completely enclosed the bar area of the private club utilizing self-closing doors and is (B) served by a board of health-approved key entry system that prohibits entry by the general public into the bar area, and (C) employees must be members of the club. Any bar area that permits smoking cannot be used for bingo or beano. Any private club which initiates active membership locations in Peabody after the date of enactment of these regulations shall be smoke free at all times.
4. 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.

Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

F. 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 Peabody 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 Peabody Board of Health.

#### 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. Non-Criminal disposition authority can be found at Code of the City of Peabody Massachusetts Sec. 1-11 and Sec 1-12. The violator may have a fine levied for violations of these regulations by the City of Peabody Board of Health. Each day on which any violation exists shall be deemed to be a separate offense.

#### Penalty:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00) shall be levied at the discretion of the Board of Health.
2. In the case of a second violation, a fine of two hundred dollars (\$250.00) shall be levied at the discretion of the Board of Health.
3. In the case of three or more violations, a fine of three hundred dollars (\$300.00) shall be levied at the discretion of the Board of Health.

If no violations under Part I are found within twenty-four (24) consecutive months, then the next violation under PART I after the twenty-four month period shall be considered as a "First Offense". All subsequent violations under Part I shall follow the Penalty and Violation sequences as described in this regulation under Part I.

### **Part II. Sales of Tobacco Products to Minors Regulations**

#### A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000)); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Peabody Board of Health to curtail the access of tobacco products by minors.

#### B. Authority:

This regulation is promulgated pursuant to the authority granted to the Peabody Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations"

#### C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

**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.

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

**Employer:** Any individual, partnership, association, corporation, trust or other organized group of individuals, including Peabody or any agency thereof, which uses the services of one (1) or more employees.

**Free Standing Display/Self Service Display:** Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

**Lock-Out Device:** A mechanical or electronic unit which enables an establishment's agent or employee to directly control the sale of items through tobacco vending machines. Said devices shall meet the following minimum standard:

1. Incorporate a mechanism to prevent the tobacco vending machine from functioning in the event that the power source fails or the lockout device is otherwise disabled.
2. Will ensure that only one pack of cigarettes will be dispensed at a time.

**Minor:** Any individual who is under the age of eighteen (18).

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

**Person:** An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

D. Tobacco Sales to Minors Prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco products to a minor.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Peabody Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
3. Identification: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older.

E. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco at retail within Peabody without first obtaining a tobacco sales permit from the Peabody Board of Health. A license shall expire no later than one year from the date issued. All tobacco sales permits shall expire on May 31 every year.
2. As part of the tobacco sales permit application process, the applicant will be provided with the Peabody Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.
3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
4. The fee for a tobacco sales permit for up to one year shall be twenty-five dollars (\$25.00) for each tobacco retail location and each tobacco vending machine as determined by the Peabody Board of Health.

5. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
  6. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
  7. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
  8. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- F. Free Distribution/Free Samples Prohibited - No person or entity shall knowingly distribute or furnish without charge or at nominal cost, or cause to be furnished without charge or at less than full retail price, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public.
- G. Out-of-Package Sales Prohibited - It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. Sale or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited.
- H. Free Standing Displays/Self Service Displays- Displays of cigarette and other tobacco products, from which individual packages or cartons may be selected by the customer, must be located behind the counter of the store, and under the direct supervision (i.e., within 10 feet with an unobstructed view) of the clerk.
- I. Tobacco Vending Machines:
- Cigarette vending machines or any other device for the sale or distribution of tobacco products, are prohibited except for those located in supervised areas of bars, and only if such vending machine is properly equipped with a Lock-Out Device as defined herein.
- J. Violation:
- It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco. The violator shall receive:
1. In the case of first violation, the licensee shall be fined one hundred dollars (\$100.00) and the permit may be suspended at the discretion of the Board of Health up to sixty (60) consecutive business days.

2. In the case of a second violation, the licensee shall be fined two hundred and fifty dollars (\$250.00) and the permit may be suspended at the discretion of the Board of Health for up to six months.
3. In the case of three or more violations, the licensee shall be fined three hundred (\$300.00) dollars and the permit may be suspended for a period of time at the discretion of the Board.
4. The Peabody Board of Health shall provide notice of the intent to suspend a tobacco sales 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 or its business agent 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 Peabody Board of Health after a hearing may suspend the tobacco sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.
5. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.
6. If no violations under Part II are found within twenty-four (24) consecutive months, then the next violation under Part I after the twenty-four month period shall be considered as a "First Offense". All subsequent violations under Part II shall follow the Penalty and Violation sequences as described in this regulation under Part II.

#### K. Non-Criminal Disposition:

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. Non-Criminal disposition authority can be found at Code of the City of Peabody Massachusetts Sec. 1-11 and Sec 1-12. The violator may have a fine levied for violations of these regulations by the City of Peabody Board of Health. Each day on which any violation exists shall be deemed to be a separate offense.

#### L. Enforcement:

Enforcement of this regulation shall be by the Board of Health of Peabody or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of Peabody or its designated agent(s) and the Board shall investigate.

M. 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.

N. 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.

O. Effective Date:

These regulations shall be effective one year from the date of its enactment, being August 19, 2002, and shall supersede in the entirety the City of Peabody "Regulations Affecting Smoking in Certain Places and Youth Access to Tobacco," effective 1<sup>st</sup> January 1996.

[Board member signatures]