

TOWN OF SOUTHBOROUGH
BOARD OF HEALTH
9 CORDAVILLE ROAD
SOUTHBOROUGH, MA 01772

BOARD OF HEALTH PHONE (508) 481-3013
TOBACCO CONTROL REGULATIONS
Amended 8/19/09 & 3/26/2015 (effective 7/1/2015)

RULES AND REGULATIONS RELATIVE TO THE RESTRICTION
OF EXPOSURE TO ENVIRONMENTAL TOBACCO
SMOKE IN PUBLIC PLACES, RESTAURANTS AND IN THE WORKPLACE WITHIN
THE TOWN OF SOUTHBOROUGH.

Section 1 - PURPOSE AND AUTHORITY

The Southborough Board of Health finds that tobacco use by minors and involuntary exposure to environmental tobacco smoke (ETS) poses a severe health risk. The purpose of this regulation is to protect the health of the employees and general public in the Town of Southborough.

Section 2

This regulation is promulgated under the authority granted to the Southborough Board of Health pursuant to Chapter 111 of the Massachusetts General Laws, Section 31, that “boards of health may make reasonable health regulations.” It is also promulgated pursuant M.G.L. Chapter 270, Section 22 (2)(j) which states in part that “nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or... health...regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth ... or political subdivision of the commonwealth.” to prevent illegal sales of tobacco to minors and to minimize exposure of ETS in public places.

Section 3 - DEFINITIONS

As used in this regulation the following words shall have the following meanings, unless the context requires otherwise:

“**Bar Area of Restaurant**” means an area of a restaurant that is devoted to the serving of alcoholic beverages for consumption by guests or restaurant patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.

“Bar/Lounge” means any freestanding establishment that is primarily dedicated to the serving of alcoholic beverages for the consumption of guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity, including retail establishments where goods or services are sold as well as professional corporations and other entities where services are delivered.

“Business agent”, and individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

“Compensation”, money, gratuity, privilege, or benefit received from an employer in return of work performed or services rendered.

“Employee” means any individual or person who performs services for an employer in return for wages or profit including a contract employee, a temporary employee, and independent contractor or who performs services as a volunteer in the workplace for more than a de minimus amount of time.

“Employer”, an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees at 1 or more workplaces, at any one time, including the town or Southborough.

“Enclosed”, a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

“Hookah pipe” shall refer to a pipe with one or more long flexible tube(s) connected to a container where the smoke is cooled by passing through a liquid and includes, but is not limited to, “water pipes”, “hubble-bubbles”, “kalias”, “narghiles” or any derivative thereof.

“Outdoor space”, an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

“Municipal Vehicle” means any vehicle owned or under the control of the Town of Southborough, including but not limited to police, fire, DPW vehicles that are assigned to departments that work out of the Town Hall.

“Retail tobacco store”, an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Southborough Board of Health.

“Smoking” or **“smoke”** means the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled

“Smoking Bar”, an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, sec. 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking Bar” shall include, but not be limited to, those establishments that are commonly know as “cigar bars” and “hookah bars”,

“Workplace” means any indoor area, structure or facility or a portion thereof, at which 1 or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space including, but not limited to, work areas, employee lounges, rest rooms, conference and classrooms, employee cafeterias, and hallways.

APPLICATION OF THIS REGULATION TO PUBLIC PLACES means an indoor area or the interior of a building, or the area within 15 feet of an entranceway to a building accessible to the general public or municipal employees, and including but not limited to the following facilities:

- auditoriums;
- automobile sales rooms, dealerships, repair shops, and service stations;
- bank and automatic teller machine (ATM) lobbies;
- bars and lounges;
- bus (es) and other public transportation vehicles, municipal vehicles;
- clinics and other health care facilities;
- clubs, rooms, and halls when used for public meetings or gatherings;
- common areas of apartment buildings and condominiums;
- elevators accessible to the public;
- funeral homes;
- game arcades;
- gasoline stations;
- grocery stores, supermarkets, and convenience stores;
- halls and rooms used for public meetings or gatherings;
- hallways accessible to the public;
- hair salons, barber shops and cosmetology establishments;
- health and fitness centers;
- indoor sports arenas;
- indoor stairwells accessible to the public laundromats;
- libraries;
- licensed child care locations, including child care homes;
- municipal buildings;
- museums and galleries;
- nursing homes;
- places of public worship;
- public rest rooms;
- retail food establishments;
- retail stores;
- schools and other educational facilities;

theaters or other facilities used for a stage production, play, lecture, musical recital, or other similar performance, except when smoking is part of said performance;
video rental stores;

Restaurant means any coffee shop, cafeteria, sandwich stand, private or school cafeteria, and any other eating establishment including bar areas of dining establishments which gives or offers food for sale to the public, guests or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

“Work space or work spaces”, an enclosed area occupied by an employee during the course of his employment.

Section 4 - PROHIBITION OF SMOKING IN PUBLIC PLACES

Smoking or the use of any tobacco product is prohibited in all public places within the Town of Southborough in accordance with M.G.L. Ch. 270, sec. 22.

Prohibition of Smoking in the Work Place

The Southborough Board of Health finds that involuntary exposure to environmental tobacco smoke (ETS) poses a severe health risk therefore smoking in workplaces is prohibited.

Smoking is prohibited in all municipal vehicles.

Prohibition of Smoking in Restaurants

Smoking in restaurants, including bar areas of restaurants is prohibited.

A sign must be conspicuously posted identifying the restaurant/bar as a smoke-free establishment

Pursuant to M.G.L. Ch. 270, sec. 22 smoking is also hereby prohibited in:

smoking bars;

retail tobacco stores; and

outdoor spaces of restaurants and any other outdoor space where food, beverages and/or alcohol is sold and/or served to the public or otherwise consumed or carried by the public.

It shall be unlawful for any owner, manager or person in charge of a public place covered by these regulations, to permit or for his other agent or designee to permit any violation of this regulation. It shall be the responsibility of an employer to provide a smoke free environment for all employees working in an enclosed workplace.

SECTION 5: ENFORCEMENT

Board of Health agents may, upon witnessing a person in possession of a burning tobacco product in a public place, issue a fine of \$100.00 to that person.

In the case of the first violation of Section 4, the owner, manager or person in charge shall be fined one hundred dollars (\$100.00). In the case of the second violation of Section 3 within a twelve (12) month period, the owner, manager, or person in charge shall be fined two hundred dollars (\$200.00). In the case of three or more violations of Section 3 within a twelve (12) month period, the owner, manager or person in charge shall be fined three hundred dollars (\$300.00) for each violation.

The Board of Health shall provide written notice to the permit holder of the intent to suspend or revoke a food establishment permit. The notice shall contain the reasons for the suspension or revocation and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of notice. The permit holder shall have an equal opportunity to be heard and shall be notified of the Board of Health's decision and reasons in writing.

SEVERABILITY

If any paragraph or provision of these regulations is declared invalid, unenforceable, illegal, or against public policy, or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

EFFECTIVE DATE

These regulations shall be effective as of August 19, 2009.

Section 7 - INSPECTIONS / ENFORCEMENT

The Board of Health may enforce this regulation through periodic inspections conducted by the Board of Health or its enforcement officer(s) or designee(s).

Board of Health
Southborough, Massachusetts

CHAPTER 270. CRIMES AGAINST PUBLIC HEALTH

Chapter 270: Section 22. Smoking in public places

Section 22. (a) As used in this section, the following words shall have the following meanings, unless the context requires otherwise:

"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 the establishment.

"Compensation", money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

"Customer service area", an area of the workplace that a business invitee may access.

"Employee", an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.

"Employer", an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees at 1 or more workplaces, at any 1 time, including the commonwealth or its agencies, authorities or political subdivisions.

"Enclosed", a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

"Lodging home", a dwelling or part thereof which contains 1 or more rooming units in which space is let or sublet for compensation by the owner or operator to 4 or more persons. The residential portion of boarding houses, rooming houses, dormitories, and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters, and assisted living homes are not included in this definition.

"Membership association", a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

(i) a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or

(ii) a corporation organized under chapter 180 ; or

(iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or

(iv) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

"Outdoor space", an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

"Public building", a building owned by the commonwealth or any political subdivision thereof, or in an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

"Public transportation conveyance", a vehicle or vessel used in mass public transportation or in the transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, Massachusetts Port Authority; state transportation department; or a vehicle or vessel open to the public that is owned by, or operated under the authority of a business, including tour vehicles or vessels, enclosed ski lifts or trams, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle or vessel not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or other vessel, shall not be considered a public transportation conveyance.

"Residence", the part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home; vacation home, cabin or cottage; a residential unit in a governmental public housing facility; and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered to be a residence; if the unit is an enclosed indoor space used exclusively as a residence, and other employees, excluding family members of the employee, or the public has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

"Retail tobacco store", an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located.

"Smoking" or "smoke", the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

"Smoking bar", an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises; derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under the age of 18 years of age during the time when the establishment is open for business; prohibits any food or beverage not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city or town where the establishment is located; and, maintains a valid permit to operate a smoking bar issued by the department of revenue.

"Workplace", an indoor area, structure or facility or a portion thereof, at which 1 or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

"Work space or work spaces", an enclosed area occupied by an employee during the course of his employment.

(b)(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

(2) Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns, or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meals tax on the purchase; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in section 9C

of chapter 112, group child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under section 38 of chapter 10 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal, or enclosed outdoor platform.

(3) A person shall not smoke in the state house or in a public building or in a vehicle or vessel, owned, leased, or otherwise operated by the commonwealth or a political subdivision thereof, or in a space occupied by a state agency or department of the commonwealth which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, or in a courtroom or courthouse. This subsection shall not apply to a resident or patient of a state hospital, the Soldiers' Home in Massachusetts located in the city of Chelsea or the Soldiers' Home in Holyoke.

(c) Notwithstanding subsection (b), smoking may be permitted in the following places and circumstances:

[Paragraph (1) of subsection (c) effective until July 31, 2008. For text effective July 31, 2008, see below.]

(1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the office of child care services or as a health care related office or facility;

[Paragraph (1) of subsection (c) as amended by 2008, 215, Secs. 82 and 83 effective July 31, 2008. For text effective until July 31, 2008, see above.]

(1) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility;

(2)(i) premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by the association during the time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

(A) open to the public; or

(B) occupied by a non-member who is not an invited guest of a member or an employee of the association; or

(C) rented from the association for a fee or other agreement that compensates the association for the use of such space.

(ii) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person who is a contract employee, temporary employee, or independent contractor shall not be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purposes of this subsection.

(3) A guest room in a hotel, motel, inn, bed and breakfast or lodging home that is designed and normally used for sleeping and living purposes, that is rented to a guest and designated as a smoking room pursuant to paragraph (1) of subsection (g).

(4) A retail tobacco store, if the store maintains a valid permit for the sale of tobacco products issued by the appropriate authority in the city or town in which the retail tobacco store is located. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(5) A smoking bar, if the smoking bar maintains a valid permit pursuant to this section. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

(6) By a theatrical performer upon a stage or in the course of a professional film production, if the smoking is part of a theatrical production, and if permission has been obtained from the appropriate local authority;

(7) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university, or in a professional testing laboratory as defined by regulation of the department of public health;

(8) Religious ceremonies where smoking is part of the ritual; and

(9) A tobacco farmer, leaf dealer, manufacturer, importer, exporter, or wholesale distributor of tobacco products, may permit smoking in the workplace for the sole purpose of testing said tobacco for quality assurance purposes; if the smoking is necessary to conduct the test.

[*There is no subsection (d).*]

(e) If the outdoor space has a structure capable of being enclosed by walls or covers, regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed, when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed work space. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.

(f)(1) A nursing home, licensed pursuant to section 71 of chapter 111 and any acute care substance abuse treatment center under the jurisdiction of the commonwealth, may apply to the local board of health having jurisdiction over the facility for designation of part of the facility as a residence.

(2) All applications shall designate the residential area of the facility. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees.

(3) The entire facility may not be designated as a residence.

(4) The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility.

(5) All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to nonsmoking areas.

(6) The facility shall provide suitable documentation, acceptable to the local board of health, that the facility is the permanent domicile of the residents residing in that portion of the facility, that information on the hazards of smoking and second hand smoke have been provided to all residences and that smoking cessation aids are available to all residents who use tobacco products.

(7) The designated residential area shall be in conformance with the smoking restriction requirements of section 72X of chapter 111 and 105 CMR 150.015 (D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express approval of the local board of health.

(8) All areas of a nursing home not designated as a residence shall comply with this section.

(9) The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to tobacco smoke.

(10) Upon compliance with this section, submission of the required documentation and satisfactory inspection, the local board of health shall certify the designated portion of the facility as a residence. The certification shall be valid for 1 year from the date of issuance. No fewer than 30 days before the expiration of the certification, the facility may apply for re-certification. If the local board of health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time as the local board of health notifies the nursing home of its certification status.

(g)(1) A designated smoking room in a hotel, motel, inn, bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrances from a public hallway and public spaces; and in the interior of the room. Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with paragraph (4).

(2) A retail tobacco store that permits smoking on the premises shall, pursuant to paragraph (4), post in a clear and conspicuous manner, a sign at each entrance warning persons entering the establishment that smoking may be present on the premises; of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises.

(3) A smoking bar shall, pursuant to paragraph (4), post in a clear and conspicuous manner signs at all entrances which warn persons entering the establishment that smoking may be present on the premises; and, of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises.

(4) Every area in which smoking is prohibited by law shall have "no smoking" signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.

(5) Additional signs may be posted in public areas such as, the following areas: lobbies; hallways; cafeterias; kitchens; locker rooms; customer service areas; offices where the public is invited; conference rooms; lounges; waiting areas; and elevators.

(6) Approved signs and templates for signage design may be obtained from the department of public health or the local boards of health.

(7) It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.

(h)(a)(1) A smoking bar operating in the commonwealth shall obtain a smoking bar permit from the department of revenue. A permit issued by the department shall be valid for a period of 2 years from date of issuance unless suspended or revoked. A valid permit that is not suspended at the time of its expiration may be renewed for consecutive 2-year periods.

(2) A non-refundable fee may be required with each permit and renewal application. Each permit issued by the department shall be non-transferable, for a specific location and business; and, only 1 permit may be issued to a business for a specific location during any permit period.

(3) The department shall not issue or renew a smoking bar permit to any business that has not filed all tax returns and paid all taxes due the commonwealth; or is delinquent in filing all declaration statements in connection with the smoking bar permit as required by the department.

(4) The department shall notify the local board of health or municipal health department in the city or town where the establishment is located of any permits issued, renewed, suspended, revoked or reinstated to a business.

(b) A smoking bar shall demonstrate on a quarterly basis that revenue generated from the sale of tobacco products are equal to or greater than 51 per cent of the total combined revenue generated by the sale of tobacco products, food and beverages. The department shall require each business that has been issued a

smoking bar permit to submit a quarterly declaration for each 3 month period that the business is in operation; notwithstanding, the first declaration may include a period of not to exceed 4 months. A declaration submitted to the department in connection with a smoking bar permit shall be signed by the owner or business agent under the pains and penalties of perjury. A declaration received by the department shall be confidential and the financial information contained therein shall not be disclosed to the public or any other state governmental agency or department except the attorney general. In the event a business has not filed a required declaration statement, the department shall give written notice to the business that the statement is delinquent and, shall suspend the permit of a business that does not submit the required report after 21 days of the date of notice; but the department shall reinstate the suspended permit within 5 days after receiving the delinquent report.

(c) The department of revenue shall promulgate regulations to implement this section.

(i) Companies which sell ownership rights to owners of time share properties shall distinguish between smoking and non-smoking time share properties. Companies shall disclose to potential buyers whether the unit they are purchasing is a smoking or non-smoking property and post signs accordingly.

(j) Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth.

(k) An individual, person, entity or organization subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation, to a person, entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint or furnishing information during any period of work or time of employment, shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about such place of work or to the public.

(l) An owner, manager or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100 for the first violation; \$200 for a second violation occurring within 2 years of the date of the first offense; and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of a building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the department of public health, the local board of health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the department of public health. The department of public health shall promulgate regulations to implement this section including, but not limited to notice, collection, and reporting of the fines or license action, and defining uniform standards that warrant license suspension or revocation.

(m)(1) The local board of health, the department of public health, the local inspection department or the equivalent, a municipal government or its agent, and the alcoholic beverages control commission shall enforce this section. In addition, in the city of Boston, the commissioner of health and his authorized agents shall enforce this section.

(2) An individual or person who violates this section by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation. As an alternative to criminal prosecution, a violation of subsection (l) may also be considered a civil violation. Each enforcing agency under paragraph (1) shall dispose of a civil violation of this section by the non-criminal method of disposition procedures contained in section 21D of chapter 40, without an enabling ordinance or by-law, or by the equivalent of these procedures by a state agency under regulations of the department of public health. The disposition of fines assessed under this section shall be subject to section 188 of chapter 111. Fines assessed by the commonwealth or its agents shall be subject to section 2 of chapter 29. In a city or town having an ordinance or by-law that imposes a fine greater than the fine imposed by this section, the ordinance or by-law shall prevail over this section.

(3) Any person may register a complaint to initiate an investigation and enforcement with the local board of health, the department of public health, or the local inspection department or the equivalent.

(4) The supreme judicial court or the superior court shall issue appropriate orders to enforce this section and any regulation under it, at the request of any agency mentioned in paragraph (1).

(5) A fine or fee collected by the commonwealth under this section shall be used for the enforcement or for educational programs on the harmful effects of tobacco.

(n) Each local board of health, each local inspection department or its equivalent, and the alcoholic beverages control commission shall report annually to the commissioner of public health, beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines. The department of public health shall file a copy of the report with the clerks of the House of Representatives and the senate.

(o) The department of public health may issue regulations to implement this section.