

Be it ordained by the Board of Health of the Town of Merrimac, as follows:

Sections 1, 2, 4, 5, 6, 7, 8 of the Board of Health Tobacco Control Regulations are hereby deleted and amended with the following:

A - Statement of Purpose:

Conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritation to the eyes, nose, and throat. The harmful effects of tobacco smoke are not confined to smokers, but also cause severe discomfort and illness to nonsmokers. Environmental tobacco smoke (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). The Ninth Report on Carcinogens of the Public Health Service's National Toxicology Program classified secondhand smoke as a known human carcinogen (U.S. DHHS, 2000) and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002). The Board of Health Town of Merrimac 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 Town of Merrimac 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 Town of Merrimac.

Town: The Town of Merrimac.

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 Merrimac 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. Chapter 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, sec. 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 beverages.

Public place: Any building, facility or vehicle owned, leased, operated or occupied by the municipality, including school buildings and grounds; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, supermarkets, restaurants, 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, public mass transit conveyances and indoor platforms and enclosed outside platforms, open meetings of a governmental body, licensed child-care locations, including child care homes, the area within 30 feet of all entranceways.

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 all public places including but not limited to bars, restaurants, work sites, private clubs and private social functions.
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 Board of Health of the Town of Merrimac 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 Board of Health of the Town of Merrimac.

F -- Exceptions:

Notwithstanding the provisions of Section 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 and Inns rented to guests that are designated as "smoking rooms", provided that at least 80% of the rooms be smokefree at all times. Hotel rooms with smoking allowed rooms shall have separate heating and ventilation systems. 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 Merrimac Board of Health.

3. An outside event sponsored by the Town of Merrimac or required to hold a permit from the Town of Merrimac, such as "Concerts on the Common," outside concerts, outside plays, or other similar gatherings, shall have a designated smoking area away from the general public.

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) shall be levied.

2. In the case of a second violation, within a 12 month period, a fine of two hundred dollars (\$200.00) shall be levied.

3. In the case of three or more violations, within 12 months of the date of the current violation, a fine of three hundred dollars (\$300.00) shall be levied.

4. Whenever the Board of Health determines that a food service permit holder has committed three violations of this regulation within any twenty-four month period, calculated from the date of the first violation, the Board of Health shall suspend said food service permit. The Board of Health shall provide notice to the food service permit holder of the intent to suspend said permit, which notice shall contain the reasons therefore and establish a time and date for a hearing before the Board, which date shall be no earlier than seven days after the date of said notice. The food service permit holder shall have the opportunity to be heard at such hearing and shall be notified of the decision of the Board of Health and the reasons therefore, in writing. The food service establishment shall be closed during said suspension. Failure to close the food service establishment during the period of said suspension of the food service permit shall constitute a separate violation of this section, each day constituting a separate offense.

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 person 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 Section 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.

Effective Date January 1, 2008

Adopted Date December 20, 2007

Eileen Hurley, Chairman

David Libby

Ellen Janelli