

REGULATIONS OF THE HOLYOKE BOARD OF HEALTH SMOKING IN CERTAIN PUBLIC PLACES

Section 1: Statement of Purpose

Conclusive evidence exists that tobacco smoke causes cancer, heart disease, negative birth outcomes, various lung disorders, and allergies and irritations to the eyes, nose, and throat. Evidence further demonstrates that the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to non-smokers. Environmental tobacco smoke (ETS), which includes both exhaled smoke and the sidestream smoke from a burning cigarette, 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). In 2000, the Public Health Service's National Toxicology Program listed ETS as a known human carcinogen (US DHHS, 2000, citing Cal EPA, 1997). ETS contains more than 4,000 substances, more than 40 of which, according to the U.S. Environmental Protection Agency, are known to cause cancer in humans or animals and many of which are strong irritants.

The Holyoke Board of Health finds and declares that the purposes of this regulation are (1) to protect the public health and welfare by prohibiting smoking in public places and (2) to guarantee the right of non-smokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 2: Authority

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

Section 3: Definitions

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

Bar: A free-standing establishment which 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. A bar shall not operate a full serving kitchen nor shall the serving of food be the principal business of any portion of a bar. A full serving kitchen is a kitchen that provides more than incidental foods and or meals.

Bar-Area: An area within a food service establishment, approved by the Board of Health, which 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.

Board: Shall mean the Board of Health of the City of Holyoke.

Business: Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, engineering, architectural or other professional services are delivered.

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.

Dining Area: The area of a restaurant where tables and/or counters are provided for customers to sit or stand with the primary purpose of eating food purchased at the food service establishment.

E-Cigarette: Any electronic device composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid, to simulate smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, vaporizer or under any other product name.

Employee: Any individual who performs services for an employer.

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

Enclosed: A space bound by walls continuous from the floor to the ceiling and enclosed by doors. The construction of the walls, floor, ceiling and doors shall be of such material that will prevent the permeation of tobacco smoke pollutants. The doors must be self-closing.

Environmental Tobacco Smoke (ETS) (commonly referred to as secondhand smoke): Means both exhaled smoke and the smoke given off by the burning end of a cigarette, pipe, or cigar, as well as the exhaled vapor or smoke given off from the use of an e-cigarette or vaporizer.

Food Service Establishment: Any place where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether consumption of food is on or off the premises and regardless of whether there is a charge for the food. The term includes, but is not limited to, any restaurant, coffee shop, cafeteria, catering operation, kitchen where catering food is prepared, delicatessen, luncheonette, short-order cafe, pizza shop, donut shop, grille, tea room, sandwich stand, public and private school cafeteria, and workplace cafeteria.

Indoor Sports Arena: Any sports pavilion, gymnasium, health spa, boxing arena, martial arts school, swimming pool, roller or ice rink, bowling alley, or other similar

place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

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.

Municipal Building: Any building that is owned by or under the control of the City of Holyoke including but not limited to schools, fire stations, police stations, Public Works buildings, and City Hall.

Negative Static Pressure: Means that the atmospheric pressure, controlled by a mechanical ventilation system in a designated smoking area, is less than the atmospheric pressure in the designated non-smoking area, such that secondhand smoke is prevented from escaping when the doors are opened for entry or departure from the smoking area.

Nonsmoking Area: Any area that is designated and posted by the proprietor or his or her designated agent as a place where smoking by patrons, employees or others is prohibited.

Private Social Club: Means 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 or manager, such as a wedding reception.

Proprietor: One who has the legal right or exclusive title to a business. Examples include owner, officer, corporation, partnership, franchisee, etc.

Public Function: Any gathering that is open to and welcomes the general public to participate, but not limited to meetings, fundraisers and dinners that are conducted in a private or public facility. There may or may not be a charge for participation.

Public Place: An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: licensed child care locations; educational facilities; banks; medical clinics; nursing homes; funeral parlors; hotel, motel and inn lobbies; libraries; schools; municipal buildings; museums; retail stores;

retail food establishments; indoor sports arenas; theaters; auditoriums; public transit facilities; shopping malls; laundromats; hairdresser shops and barber shops; elevators, stairwells, halls and entrances accessible to the public; public restrooms; and any rooms or halls when used for public meetings. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall **not** be construed as a public place.

Retail Food Establishment: Any establishment commonly known as a supermarket, grocery or convenience store in which the primary activity is the sale of food items to the public for off premises consumption.

Retail Store: Any establishment selling goods or articles not for resale or personal services to the public.

Retail Tobacco Store: A retail store utilized for the sale of tobacco products and accessories and in which the sale of others products is merely incidental and is not required to possess a retail food permit.

Restaurant: Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and other eating establishment 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.

Smoking: The possession and/or use of a lighted tobacco product including a cigarette, cigar, pipe or any other tobacco product; the use of electronic cigarettes or vaporizers.

Smoking Area Ventilation System: A mechanical system to remove tobacco smoke to the outside of the building replacing it with fresh air supplied from an outdoor source. For the purpose of these regulations, the Board of Health requires a "smoking area ventilation system" that supplies a minimum of sixty (60) Cubic Feet per Minute (CFM) per person and allows a minimum area of (10) square feet per person in the workplace and a minimum of thirty (30) CFM per person and allows a minimum area of (10) square feet per person in restaurant smoking rooms and restaurant-bars, if smoking is to be permitted. The effectiveness of "smoking area ventilation system" must be evaluated by an HVAC Engineer, in a written report, and provided to the Board of Health for approval. Particulate air cleaners or filtration systems are not considered to be a "smoking area ventilation system".

Smoking Bar: A bar approved by the Holyoke Board of Health, that is enclosed, under negative static pressure, and contains an independent smoking area ventilation system, separate and distinct from all other ventilation systems in the establishment, and which does not return exhaust to the main system or other area of the facility.

Tobacco Products: Any good that is used to contain or is composed of material from plants of the genus *Nicotiana*, or contains the chemical nicotine, including, but not limited to, cigarettes, cigars, tobacco rolling papers, tobacco leaves, liquid nicotine, nicotine gum, and e-cigarettes.

Workplace: Any area within a structure or portion thereof, at which one (1) or more employees, paid or volunteer, perform services for their employer. It also includes employee lounges, lunchrooms, cafeterias, restrooms, conference and meeting rooms, auditoriums, classrooms, private offices, medical facilities and vehicles while being used for business purposes, and all other enclosed facilities.

Section 4: Prohibition of Smoking in Public Places

- 4.1 Smoking shall be prohibited in enclosed public places within the City of Holyoke including, but not limited to the following:
- A. All areas available and customarily used by the general public and all businesses and non-profit entities patronized by the public, including but not limited to professional offices, funeral parlors, banks, laundromats, and haircutting establishments.
 - B. Any facility which is used for exhibiting any motion picture, stage production, play, lecture, musical recital or other similar performance, except where smoking is part of the stage production.
 - C. Aquariums, galleries, libraries and museums when open to the public.
 - D. Buses, taxicabs, trains and other means of public mass transit while operating within the boundaries of the City of Holyoke, and ticket, boarding, and waiting areas of public transit depots.
 - E. Carousels.
 - F. Child care facilities.
 - G. Elevators, stairwells, hallways and entrances accessible to the public.
 - H. Food service establishments.
 - I. Indoor sports arenas, auditoriums and convention halls.
 - J. Lobbies, hallways, and other common areas of hotels, motels, inns, apartment buildings, condominiums, retirement facilities, nursing homes, or other multiple-unit residential facilities, and other common areas in multiple-unit commercial facilities.
 - K. Municipal buildings.
 - L. Polling places.
 - M. Public Schools (M.G.L. c. 71, § 2A), and other educational facilities.

N. Restrooms in buildings open to the public.

O. Retail food establishments.

P. Retail stores and malls.

Q. 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.

4.2 Each nonsmoking facility where smoking is prohibited in part or all of said facility shall provide containers of sand, or a comparable non-combustible receptacle specifically for cigarette butts, at each entrance.

Section 5: Where Smoking Is Permitted

5.1 Smoking may be permitted in the following areas, consistent with the Massachusetts Smoke Free Workplace Law, General Laws Ch. 270 §22:

A. Hotel and motel rooms rented to guests that are designated as smoking rooms. The smoking rooms so designated shall be posted with signage indicating that smoking is allowed therein. The number of rooms that are designated as smoking and the number designated as non-smoking must be submitted in writing to the Board of Health. No changes in room designation can take place without prior written approval of the Board of Health.

B. Private residences, except when used as a child care or health care facility.

C. Retail tobacco stores provided no one under age twenty-one (21) is allowed in the store.

D. A smoking bar, if the smoking bar maintains a valid permit pursuant to G.L. Ch. 270 §22 (c)(5), and has been approved by the Board of Health. There shall be no expansion of smoking bars without prior approval of the Board. All required permits shall be displayed in a conspicuous manner, visible at all times to patrons of the establishment.

E. Membership associations, provided smoking is only done by members or their guests in areas not accessible to non-members, and the membership association is not publicly accessible or located in a public building.

Section 6: Workplace

6.1 It shall be the responsibility of employers to provide a smoke-free workplace for all employees consistent with G.L. Ch. 270 §22.

6.2 Each employer having an enclosed place of employment located within the City of Holyoke shall adopt, implement, and post in a conspicuous place, these regulations.

6.3 Employers are encouraged to develop a written in-house smoking policy, consistent with these regulations, outlining a plan for compliance. The Holyoke Board of Health can provide a sample policy, and is available to assist with the development of a smoking policy upon request.

Section 7: Posting of Signs

7.1 "No Smoking" signs or the international "No Smoking" symbol, (consisting of a pictorial representation of a burning cigarette enclosed with a red circle with a bar across it) shall be clearly, sufficiently and conspicuously posted by the proprietor(s) or his or her agent at each entrance and in each independent room and/or area within every building or other public place subject to these regulations.

7.2 Signs approved and supplied by the Holyoke Board of Health advising patrons as to the health hazards of ETS, shall be clearly, sufficiently, and conspicuously posted at each entrance and the interior of every smoking room, bar and bar-area where smoking is permitted.

7.3 Signs are available free of charge and may be picked up at the Holyoke Board of Health at the City Hall Annex, Room 306, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Section 8: Penalties

8.1 Any proprietor of an establishment who fails to comply with this regulation shall be subject to:

A. A fine of one hundred dollars (\$100.00) for a first violation.

B. A fine of two hundred dollars (\$200.00) for a second violation occurring within twenty-four (24) month of a prior violation.

C. A fine of three hundred dollars (\$300.00) for a third or subsequent violation occurring within any twenty-four (24) month period.

D. Suspension, revocation, or non-renewal of any license or permit issued by the Board of Health, after three violations within any consecutive twenty-four (24) month period.

8.2 Permit Suspension Hearing Procedure:

- A. The Holyoke Board of Health shall provide written notice to the proprietor of the intent to suspend a permit or license and notify the proprietor of his/her right to request a hearing before the Holyoke Board of Health.
- B. The notice provided by the Holyoke Board of Health shall identify the permit or license at issue, state the intent to suspend a permit or license and shall contain the reasons therefore in writing. The Holyoke Board of Health after a hearing may suspend the permit. The proprietor has the responsibility to request such hearing in writing within ten (10) calendar days after receipt of the Board of Health notice.
- C. Upon receipt of such request the Board of Health shall set a time and place for a hearing and shall inform the petitioner thereof in writing. The hearing shall be commenced not later than forty-five (45) calendar days after the Board of Health receives the request from the petitioner.
- D. If a written petition for a hearing is not filed with the Board of Health within ten (10) calendar days after the day the notice was served, or if, after a hearing, an order for permit suspension has been sustained in any part, each day's failure to comply with the order as issued or modified, shall constitute an additional offense.

8.3 Each day any violation exists shall be deemed to be a separate offense.

Section 9: Non-Criminal Disposition

- 9.1 Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, section 21 D or by filing a complaint at the appropriate venue in addition to the suspension or revocation of any applicable permit or license.
- 9.2 Each day any violation exists shall be deemed to be a separate offense.
- 9.3 Any proprietor of an establishment who fails to comply with this regulation shall be subject to:
 - A. A fine of one hundred dollars (\$100.00) for a first violation.
 - B. A fine of two hundred dollars (\$200.00) for a second violation occurring within twenty-four (24) month of a prior violation.
 - C. A fine of three hundred dollars (\$300.00) for a third or subsequent violation occurring within any twenty-four (24) month period.
 - D. Suspension, revocation, or non-renewal of any license or permit issued by the Board of Health, after three violations within any consecutive twenty-four (24) month period.

- 9.4 Any proprietor who fails to pay the assessed fine or who fails to request a hearing within twenty-one (21) days from fine issuance may be subject to criminal proceedings.

Section 10: Additional Conditions for Compliance

- 10.1 Any construction, modification or changes to the premises for the purpose of allowing smoking, must also comply with all other Federal, State and City permits and requirements. Specifically, the Building Department, Board of Health, and Fire Department should be consulted before any designs are finalized.
- 10.2 In the case of any breakdown or malfunction, in whole or part, of the physical barrier or ventilation system, all smoking within a smoking room or bar-area shall cease immediately and may not be resumed until the area is brought back to maximum efficiency.

Section 11: Other Applicable Laws

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

Section 12: Enforcement

- 12.1 This regulation shall be enforced by the Board of Health of the City of Holyoke or its designated agent(s).
- 12.2 Any person may register a complaint under this regulation by filing a complaint with the Holyoke Board of Health or its designated agent(s) located at the City Hall Annex, Room 306 or by calling (413) 322-5595. After receipt of a complaint the Board shall investigate.

Section 13: Severability

If any portion of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby, but shall continue in full force and effect.

Section 14: Effective Date

This Regulation shall become effective as of June 11th, 2015.

Patricia A. Mertes, APRN, Chair
Robert S. Mausel, MD, Vice Chair
Dalila Hyry-Dermith, Clerk
Brian Fitzgerald, Director of Health

6/4/15 *Robert Mausel*

~~July 19, 1994~~
Voted to Adopt Regulation "Regulations Affecting Smoking in Certain Place and Youth Access to Tobacco" by
unanimous vote

~~August 1, 1994~~
Revised

~~September 19, 1995~~
Revised

~~October 10, 1995~~
Effective Date

~~June 5, 2001~~
Revised as "Regulations of the Holyoke Board of Health/Smoking in Certain Public Places".

~~June 11, 2015~~
Revised