

Environmental Tobacco Smoke Bylaw (Town Bylaw)

***Section 2. Eliminating Public Exposure to Tobacco Smoke in Public Places**

SECTION I. AUTHORITY

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies and irritations to the eyes, nose and throat to both the smoker and nonsmoker exposed to secondhand smoke. Environmental tobacco (hereinafter ETS) causes the death of 53,000 Americans each year and 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). Therefore, the Town of Marshfield recognizes the right of those who wish to breathe smoke free air and establishes this by-law to protect and improve the public health and welfare by prohibiting smoking in public places effective September 1, 2001.

SECTION 11. DEFINITIONS

As used in this by-law:

Board of Health shall mean the Marshfield Board of Health

Employee means any natural person who performs services for an employer

Employer means a natural person, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Marshfield or any agency thereof, which utilizes the services of one (1) or more individuals.

Health Care Facility means any office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices or any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Indoor Sports Arena means any sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar enclosed recreational facilities where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Person means any person, 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 agents or designees of any of the foregoing.

Public Place means any building owned, leased, operated or occupied by the municipality, any enclosed area open to the general public including, but not limited to, libraries, museums, theaters, auditoriums, indoor sports arenas and or recreational facilities, inns, hotels and motel lobbies, educational facilities, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public, and licensed child-care locations.

Public transportation means buses, taxis and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the town including indoor platforms by which such means of transportation may be accessed.

Private club means a not-for-profit establishment with a defined membership.

Lounge/bar area means an area primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Restaurant means any coffee shop, cafeteria, sandwich stand, private and public 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.

Retail Food Store means any establishment commonly known as a supermarket, grocery store, bakery, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption.

Smoking means the inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.

Workplace means any area of a structure or portion thereof at which one (1) or more employees perform services for their employer.

SECTION III. 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 Marshfield 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 Marshfield Board of Health.

SECTION IV. SMOKING PROHIBITED

No person shall smoke nor shall any person, employer, or other person having control of the premises upon which smoking is prohibited by this regulation, or the agent or designee of such person, permit a person to smoke in any of the following places as defined herein: health care facilities, enclosed public places, public transportation, restaurants, retail stores, and workplaces except as otherwise provided in Section V of this by-law.

Additionally, no person shall smoke in any place in which a sign conforming to the requirements of Section III of this regulation is posted. No person shall remove a sign posted under the authority of Section III of this by-law.

SECTION V. EXCEPTIONS

Notwithstanding the provisions of Section IV of this by-law, smoking may be permitted in the following places and/or circumstances:

Private residences except those portions used as a licensed childcare or health care office when operating as such

Hotel and motel rooms rented to guests that are designated as smoking rooms

Hotel and motel conference/meeting rooms and private and public assembly rooms while these places are being used for private functions.

Private or semi-private rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, which are separately ventilated and all of who are smokers who have requested in writing to be placed in rooms where smoking is permitted.

Retail tobacco stores, which are primarily for the sale of tobacco products and paraphernalia, in which the sale of other products is merely incidental, prohibit minors from entering the establishment and are not required to possess a retail food permit.

Outdoor seating, or sidewalk portions of a food service establishment, provided that such outdoor section may be covered but not otherwise enclosed except for the one side which adjoins the food service establishment.

Private clubs, except when the private club is open to the public

Bars and Restaurants providing physical barriers separating smoking and non-smoking sections as well as separate systems of ventilation for each. Ventilation systems must be approved by the Board of Health.

SECTION VI – CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of the foregoing Section V of this by-law, 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.

SECTION VII – VIOLATIONS

Any person who violates this regulation shall be subject to a fine of fifty dollars (\$50.00) for a first offense, one hundred dollars (\$100.00) for a second offense within one year of the first offense and one hundred and fifty dollars (\$150.00) for a third or subsequent offense within one year of the date of the first offense.

SECTION VIII – ENFORCEMENT

As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in the manner provided in Massachusetts General Laws, Chapter 40, Section 21D by the Board or its agents. Any fines imposed under the provisions of this regulation shall inure to the Town of Marshfield for such use as the town may direct.

One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation.

Any citizen who desire to register a complaint under this regulation may request that the Board of Health initiate enforcement.

SECTION IX – NON-CRIMINAL DISPOSITION

Whoever 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 the filing of a criminal complaint at the appropriate venue.

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

Penalty: \$50.00 for first offense
 \$100.00 for second offense
 \$150.00 for third offense

Enforcing Persons: Marshfield Board of Health and its designees
 Marshfield Police Department

SECTION X – 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.

*Adopted by Article 11, 2001 Annual Town Meeting