

**SECTION XI: Tobacco*****11.10: Authority and Purpose.***

**11.10.1:** The Board of Health is authorized to take action to protect and establish reasonable regulations, to ensure that tobacco is not available to minors through vending machines, to protect the health of persons in public places and in workplaces in the Town of Marion, while imposing no unreasonable restrictions on individual decision relative to smoking in private. [May 1, 1994]

**11.10.2:** Sections of this Sanitary Code are further adopted under Massachusetts General Laws, Chapter 111, Section 31, State Sanitary Code 105 CMR as a reasonable health regulation designed to protect the residents of Marion from the dangers of tobacco and tobacco smoke. The smoking of tobacco is found to be a danger to the health and well-being of both smokers and non-smokers. Medical and scientific evidence demonstrates that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies, and irritations to the eyes, nose, and throat to both smokers and non-smokers exposed to second-hand smoke. Evidence further demonstrates that tobacco is extremely addictive and causes serious health problems. The Surgeon General has concluded that cigarettes and other forms of tobacco are habit forming in the same sense as drugs, such as heroin and cocaine. Cigarette smoking is the chief avoidable cause of death in the country. [May 1, 1994] The Environmental Protection Agency (1993) has designated environmental tobacco smoke (also known as second-hand smoke) to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure. [January 1, 2002]

**11.10.3:** Furthermore, more than 80 percent of all smokers begin smoking before age eighteen, and more than 3,000 young people begin smoking every day in this nation. Massachusetts youths are beginning to smoke at very young ages. [May 1, 1994]

**11.10.4:** Other Applicable Laws. These regulations 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. [May 1, 1994]

***11.20: Definitions.*****BAR**

Any area which is primarily dedicated to the selling of alcoholic beverages and in which the service of food is only incidental to consumption of such beverages. [May 1, 1994]

**BUSINESS AGENT**

An individual who has been designated by the owner or operator of any workplace, public place or membership association to be the manager or otherwise in charge of said workplace, public place or membership association. [November 1, 2005]

**EMPLOYEE**

Any individual or person who performs services for compensation for an employer at the Employer's workplace, including a contract employee, temporary Employee, an independent contractor who performs a service in the Employer's workplace for a substantial part of the workday.

[May 1, 1994 and November 1, 2005]

**EMPLOYER**

Any 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 one or more employees at one or more workplaces, at any one time, including the Town.. [January 1, 2002 and November 1, 2005]

**ENCLOSED**

Any space, bound by walls, with or without fenestrations, and enclosed by one or more doors.. [May 1, 1994 and November 1, 2005]

**FENESTRATION**

The arrangement, proportioning, and design of windows and doors in a building. [November 1, 2005]

**FOOD ESTABLISHMENT**

A Food Service Establishment and/or Retail Food Establishment permitted by the Board. [November 1, 2005]

**FOOD SERVICE ESTABLISHMENT**

A place where food and/or beverages are prepared and intended for individual portion service, and includes the site at which individual portions are poured and/or provided, that is in a covered area and/or located within a permanent structure. The term includes such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food and/or beverages. [November 1, 2005]

**MEMBERSHIP ASSOCIATION**

A not-for-profit entity that has been established and operates, for a charitable philanthropic, civic, social, benevolent, educational, religious, athletic, recreational 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 one 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 one 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 containing not less than the full membership costs and benefits is required for all members of the association for a period of not less than 90 days. [November 1, 2005]

#### INDOOR SPORTS ARENA

Any sports pavilion, gymnasium, health spa, boxing area, swimming pool, roller/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. [May 1, 1994]

#### MINOR

Any person under eighteen years of age. [May 1, 1994]

#### OUTDOOR SEATING

Any outside area of an establishment that is under the control of the management of said establishment. [November 1, 2005]

#### OUTDOOR SPACE

An outdoor area, open to the air at all times, not enclosed by a wall or side coverings, and not including a fixed or flexible protective covering such as an awning or canopy which may adjoin a building or similar structure on no more than two sides. [November 1, 2005]

#### PERMIT YEAR

January 1 to December 31 [November 1, 2005]

#### 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, restaurant, membership association or retail store, or the business agents or designees of any of the foregoing. [January 1, 2002 and November 1, 2005]

#### PREMISES

The entire property located at the Town address of a particular company, corporation, organization, building, establishment, business, restaurant, membership association or retail store, or the business agents or designees of any of the foregoing. [November 1, 2005]

#### PRIVATE ASSEMBLY ROOM

That enclosed area/room within a hotel, motel, restaurant, bar, membership association or function hall that is primarily used for rental or used by the public for private functions, parties, banquets or conferences. [November 1, 2005]

**PUBLIC PLACE**

Any building, facility, vehicle or vessel owned, leased, operated or occupied by the Town, including school buildings and grounds; any enclosed area open to the general public, including but not limited to retail stores, retail food stores, supermarkets, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotels/motels lobbies, private and public educational facilities, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, hall exits, entrance ways, elevators accessible to the public, public mass transit conveyances and indoor platforms and enclosed outside platforms, or open meeting of a governmental body as defined in section 11A of c. 30A, section 23A of c. 39 and section 9F of c. 34 of the General Laws, and licensed child-care locations. [May 1, 1994 and November 1, 2005]

**RESTAURANT**

Any establishment serving food for consumption on the premises or which maintains tables for the use of its customers, including cafeterias and workplace cafeterias. [May 1, 1994]

**RETAIL FOOD ESTABLISHMENT**

Any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes, but is not limited to supermarkets, grocery stores, convenience stores, and delicatessens. [May 1, 1994 and November 1, 2005]

**RETAIL STORE**

Any establishment selling goods, articles, or personal services to the public. [May 1, 1994]

**SEATING CAPACITY**

The capacity designated on the occupancy permit of a restaurant, theater, or sports arena. [May 1, 1994]

**“SECOND-HAND SMOKE” OR E.T.S. ENVIRONMENTAL TOBACCO SMOKE**

A combination of smoke released from the burning end of a lighted tobacco product as well as exhaled smoke. [November 1, 2005]

**SMOKING OR SMOKE**

The lighting of a cigar, cigarette, pipe or other tobacco or non-tobacco product, or possessing a lighted cigar, cigarette, pipe or other non-tobacco product designed to be combusted or inhaled. [May 1, 1994 and November 1, 2005]

**TOBACCO**

Cigarettes, chewing tobacco, snuff, or tobacco in any of its forms. [May 1, 1994]

**TOBACCO VENDING MACHINES**

Any device which dispenses tobacco products by self-service or by remote control. [May 1, 1994]

**WORKPLACE**

An indoor area, structure or facility or portion thereof at which one (1) or more employees perform a service[s] for compensation for an Employer, or other enclosed spaces rented to do or otherwise used by the public; except where the Employer has the right or authority to exercise control over the space.

[January 1, 2002 and November 1, 2005]

**11.25: *Permit for Location and Sales of Tobacco.***

**11.25.1:** After the effective date of this amendment, the Board of Health of the Town of Marion will issue a “Permit for Location and Sales” that will specify the name, address, and approved location per the Board of Health of the Town of Marion or their designated agent(s) for retailers who sell tobacco products.

[January 1, 1999]

**11.25.2:** After the effective date of this regulation, all retailers who are required to hold a state license to sell cigarettes or other tobacco products, will be required to hold and maintain a valid “Permit for Location and Sales” from the Town of Marion for each location at which tobacco products are sold. [January 1, 1999]

**11.25.3:** After receiving the permit, the merchant will receive signs that state “sale of cigarettes or any tobacco products to persons under age eighteen (18) is illegal. MGL Chapter 270, Sections 6 & 7.” Any merchant not posting said signs will be in non-compliance of the Regulation and subject to penalties per Subsection 11.30 of this Regulation. [January 1, 1999]

**11.25.4:** The term of the permit shall be one year. [January 1, 1999]

**11.25.5:** The fee for the one year tobacco retailer’s “permit for Location and Sales” of tobacco products is \$10.00 for each tobacco retail location.

[January 1, 1999]

**11.25.6:** A “Permit for Location and Sales” is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.

[January 1, 1999]

**11.25.7:** During such time that a “Permit for Location and Sales” of tobacco products has been suspended or revoked for violation of this Regulation, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined according to Section 11.30 until said permit is reinstated by the Board of Health of the Town of Marion or its designated agent(s). [January 1, 1999]

**11.30: *Posting, Violations, Enforcement, and Penalties.***

**11.30.1:** Posting. Every person having control of an area in the premises upon which smoking is prohibited shall display signs that are clearly visible to all Employees, customers, or visitors while in the establishment. Such sign or signs must be of such size and design, and conspicuously located so that at least one of

them is easily read from every part of the area to which persons have access. Such sign or signs shall state "No Smoking" or words of similar import, or may display a graphic symbol commonly understood to prohibit smoking.

[May 1, 1994 and November 1, 2005]

**11.30.2:** Violations. It shall be a violation of this regulation:

a) For any person to smoke in an area in which smoking is prohibited by this regulation. [May 1, 1994]

b) For any person who owns or controls an area in which smoking is prohibited by this regulation to knowingly fail to direct a person who is smoking in that area to stop smoking in that area. [May 1, 1994]

c) For any person who owns or controls an area in which smoking is prohibited by this regulation to fail, after complaint to him by any other person, to direct a person who is smoking in that area to stop smoking in that area. [May 1, 1994]

d) For any person to violate any provision of these regulations. [May 1, 1994]

**11.30.3:** Enforcement. These regulations shall be enforced by the Board of Health, or its Chairman, or any authorized agent of the Board of Health, or any police officer. Action for enforcement shall be brought criminally, except to the extent that this regulation may be subject to non-criminal disposition by a by-law of the Town. Any of the officials or officers designated above may also seek enforcement through injunctive relief in the Superior Court. [May 1, 1994]

**11.30.4:** Penalties, Fines, Suspension and/or Suspension Hearings or Permit.

It shall be the responsibility of the permit holder and/or his agent to ensure compliance with all sections of this Regulation pertaining to their place of business. The permit holder and/or his agent, or persons involved in violation of any of the provisions of this Regulation may receive:

a) In the case of the first violation, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a letter of warning from the Marion Board of Health. [January 1, 1999]

b) In the case of the second violation within one year, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of one hundred dollars (\$100.00). [January 1, 1999]

c) In the case of a third violation within one (1) year, the permit holder and/or his or her agent, or persons not in compliance with provisions of this Regulation shall receive a fine of two hundred (\$200.00) and the permit shall be suspended for seven (7) consecutive business days. [January 1, 1999]

d) In the case of a fourth or more violations within one (1) year, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of three hundred dollars (\$300.00) and the permit shall be suspended for thirty (30) consecutive business days. [January 1, 1999]

e) The Board of Health of the Town of Marion shall provide written notice to the permit holder of the intent to suspend or revoke a Permit for Location and Sales of Tobacco. The notice shall contain the reasons for the suspension or revocations and establish a time and date for a hearing. The date of the hearing shall be not earlier than seven (7) days after the date of said notice. The Permit Holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons in writing. [January 1, 1999]

### **11.35 *Smoking Prohibited.***

**11.35.1:** No person shall smoke nor shall any person be permitted to smoke in any workplace, public place, food establishment or membership association, including any outdoor seating thereto in the Town, except as otherwise provided in Section 11.40 Exemptions and Variances of this regulation.

**11.35.2:** It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation, or the business agent or designee of such workplace, public place, food establishment or membership association, to permit a violation of this regulation.

**11.35.3:** Smoking shall be prohibited in all outdoor areas of restaurants, bars, taverns, and any other outdoor place where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the consumers and/or served to consumers. [November 1, 2005]

### **11.40: *Exemptions and Variances.***

**11.40.1:** Exemptions. This regulation does not apply to:

a) Private residences (except when used as a licensed child care facility or health care facility). [January 1, 2002]

b) Private or semi-private rooms of nursing homes and long-term care facilities occupied by one or more patients all of whom are smokers who have requested in writing on the facility admission form to be placed in a room/s where smoking is permitted. [May 1, 1994]

c) In a nursing home, licensed pursuant to MGL, chapter 111, Section 71 under the jurisdiction of the Commonwealth, holding a Food Establishment permit issued by the Town, provided that:

1. The nursing home apply to the Board for designation of a part of it's facility as a residence, and;
2. The nursing home's application delineate the residential portion of it's facility which will be used solely for permanent residents of the facility, wherein no temporary or short-term resident may reside, and which shall not contain an employee workspace, such as an office, restroom or other area used primarily by Employees and;
3. All areas in the designated residential area in which smoking is allowed will be conspicuously designated as smoking areas and adequately ventilated to prevent migration of smoke to non-smoking areas and;

4. Said application includes suitable documentation, acceptable to the Board that the nursing home is the permanent domicile of residents residing in that portion of its facility, that information on the hazards of smoking and second-hand smoke will be provided to all residents, and that smoking cessation aids will be available to all residents who use tobacco products and;
  5. The designated residential area is in conformance with the smoking restriction requirements of MGL chapter 111, Section 72X and 105 CMR 150.015 (D)(11)(b), including the clear designation of all residential areas as such, and the requirement that such designation not be altered or otherwise changed without the express written approval of the Board and;
  6. All areas of the nursing home not designated as a residence comply with this section, and;
  7. The nursing home makes reasonable accommodations for Employees, residents or visitors who do not wish to be exposed to smoke, whereupon;
  8. Upon compliance with this section, submission of the required documentation, conduct of a satisfactory inspection and Board certification of a designated portion of the facility as a residence, this exception shall be valid for the period of the permit year only, unless otherwise suspended or revoked.
  9. No fewer than 30 days prior to the expiration of such an exception, the nursing home may apply for renewal of its exception. If the Board does not renew such an exception 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 exception shall be considered to continue in effect until such time as the Board notifies the nursing home of its exception otherwise.
- d)** In outdoor seating portions of a food service establishment, including but not limited to patios, decks, and porches, provides that:
1. Neither food nor beverages are sold nor served there, and;
  2. Said outdoor seating portions of the food service establishment are not enclosed and;
  3. Except for a fixed or flexible covering such as an awning or canopy which may adjoin an enclosed food service establishment on no more than two sides, all outdoor seating portions of the food service establishment shall be physically separated from said establishment, and;
  4. If doors, windows, sliding or folding windows or doors or other fenestration form any part of the border to said outdoor seating portions of the food establishment, the openings shall be closed to prevent the migration of smoke into the enclosed food service establishment, and;

5. If doors, windows, sliding or folding windows or doors or other fenestration are opened or otherwise do not prevent the migration of smoke into the enclosed food service establishment, said outdoor seating portions shall be considered an extension of the enclosed food establishment and subject to the Section 11.35 of this regulation, and;
  6. The food service establishment submits a written request with sufficient documentation for the exception to the board.
- e) In an outdoor space on the premises of a workplace or food establishment, including but not limited to patios, decks and porches, provided that;
1. Said outdoor space is not enclosed, and;
  2. Except for a fixed or flexible covering such as an awning or canopy which may adjoin the workplace or food establishment on no more than two sides, said outdoor space is open to the air at all times and physically separated from an enclosed workspace to prevent the migration of smoke into the workplace or food establishment, and;
  3. The workplace or food establishment submits a written request with sufficient documentation for this exception to the Board.
- f) Exception shall be valid only when duly issued in writing by the Board, and only for the period of permit year, unless otherwise suspended or revoked. [November 1, 2005]

**11.50: Tobacco Sales to Minors Is Prohibited.**

**11.50.1:** Posting State Law.

a) In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of the Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously by the owner or other persons in charge thereof in the shop or other place used to sell cigarettes at retail. Such notice shall directly face the purchase and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. [January 1, 2002]

b) The Board of Health or its enforcement officer/s shall enforce this regulation. [May 1, 1994]

c) Whoever violated this provision shall be punished by a fine of not more than five dollars (\$5.00). Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of ten dollars (\$10.00). [May 1, 1994]

**11.50.2:** Self Service Displays Prohibited. Self Service displays of cigarette products, from which individual packages or cartons may be selected by the customer, shall be prohibited. [January 1, 1999]

**11.50.3:** Sale by Persons Under Age 18. No person or entity, selling tobacco products, shall allow anyone to sell cigarettes or other tobacco products until the employee reads the Board of Health regulations and State laws regarding sale of tobacco and signs a sworn statement, a copy of which will be placed on file in the office of the Board of Health, that s/he understands and will uphold the regulations. [May 1, 1994]

**11.50.4:** Prohibit Cigarette Vending Machines. No tobacco products may be sold by vending machine within the Town of Marion [May 1, 1994]

**11.50.5:** Out-of-Package Sales Prohibited. No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes. [January 1, 2002]

**11.50.6:** Free Distribution of Tobacco Products.

a) No person or entity shall distribute products containing tobacco for any promotional or other commercial purposes within the Town of Marion. Such restrictions shall not apply to coupons in magazines or other periodicals or affixed to the packaging. [January 1, 2002]

b) No person, firm, corporation, establishment or agency shall distribute by hand any coupons or vouchers redeemable for tobacco or tobacco products for free or at nominal cost in the Town of Marion. [January 1, 2002]

**11.60: Public Places.**

**11.60.1:** Smoking shall not be allowed in any municipal building in the Town of Marion and within 25 feet of each point of entry to each municipal building. Smoking shall be prohibited in all public places. [January 1, 2002]

**11.60.2:** To the extent that the following are not covered by applicable State laws, no person shall smoke in any room in which the public is permitted including, but not limited to, any health care facility, classroom, lecture hall, motion picture theater, auditorium, school, day care facility, reception area, restroom/lavatory, waiting room, or public area of a bank. [May 1, 1994]

**11.70: Workplace.**

**11.70.1:** It shall be unlawful for any person to smoke in any workplace. [January 1, 2002]

**11.70.2:** 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 business agent or designee of such person, permit a person to smoke in a restaurant or bar (see Section 11:30.2 a) Violations). [January 1, 2002]

**11.70.3:** Each person having control of premises upon which smoking is prohibited by this regulation, or his/her agent/designee shall conspicuously display upon the premises "No Smoking" signs 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). [January 1, 2002]

**11.80: Restaurants.**

**11.80.1:** No person shall smoke in any food service establishment or bar. [January 1, 2002]

**11.90: Retail Stores.**

**11.90.1:** Smoking is prohibited in retail stores. [May 1, 1994]