

**ARTICLE 12.** It was voted that the Town will accept the following By-law:

Town of Bridgewater

By-Law: Prohibition of Smoking in Public Places and Workplaces  
in the Town of Bridgewater

A. Statement of Purpose:

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter 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); and whereas 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); now, therefore, the Town of Bridgewater recognizes the right of those who wish to breathe smokefree air and establishes this by-law to:

- Protect and improve the public health and welfare by prohibiting smoking in all public places and workplaces;
- Assure smokefree air for everyone;
- Recognize that the need to breathe smokefree air shall have priority over the desire to smoke in enclosed public places and workplaces;
- Set a healthful example for youngsters by creating a smokefree community.

B. Definitions: For the purposes of this by-law, the following words shall have the meanings respectively ascribed to them by this paragraph:

Bar: An adult-only establishment whose business 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.

Revenue generated from the serving of alcoholic beverages must be equal to or greater than eighty percent (80%) of the total combined revenue generated by the service of such beverages and food. Revenue figures to be considered as evidence for the purpose of this bylaw are those used in calculating the meal tax amount required to be filed with the Massachusetts Department of Revenue for the preceding year.

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 Bridgewater.

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 Bridgewater 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.

Health Care Facility: 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 rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

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. Ch. 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, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

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, bars, restaurants, retail stores, retail food stores, supermarkets, 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 as defined in section 11A of chapter 30A, section 23A of chapter 39 and section 9F of chapter 34, and licensed child-care locations.

Restaurant: Any coffee shop, cafeteria, sandwich shop, 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.

Retail Food Store: Any establishment commonly known as a supermarket, grocery store, bakery or convenience store, or any other establishment which offers food items to the public for off-premises consumption.

Retail Store: Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other things.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.

Town: The Town of Bridgewater.

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

C. Smoking Prohibited:

1. Smoking is prohibited in all workplaces and all public places.
2. It shall be unlawful for any employer or other person having control of the premises upon which smoking is prohibited by this by-law or the business agent or designee of such person, to permit a violation of this by-law.

D. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this by-law shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Bridgewater 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 Bridgewater Board of Health.

E. Exceptions:

Notwithstanding the provisions of Paragraph D of this by-law, 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.

F. Violations:

Any employer, or his or her business agent, who violates any provision of this by-law, 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 by-law. The violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00).
2. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200.00).
3. In the case of three or more violations within 24 months of the current violation, a fine of three hundred dollars (\$300.00).

G. Enforcement:

This by-law shall be enforced by the Board of Health, its designees, and/or the Bridgewater Police Department.

One method of enforcement may be periodic, unannounced inspections of those establishments subject to this by-law. Any citizen who desires to register a complaint under this by-law may request that the Board of Health initiate an investigation.

H. Severability:

If any paragraph or provision of this by-law is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

I. Conflict with Other Laws or Regulations:

Notwithstanding the provisions of the foregoing Paragraph D of this by-law, nothing in this by-law 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.

J. Effective Date:

This by-law shall be effective as of September 1, 2003.

**Yes: 464    No: 297**

**Passed**

**Motion to reconsider this article fails.**