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SECTION 12.0

REGULATIONS AFFECTING SMOKING IN CERTAIN PLACES

TABLE OF CONTENTS

12.1	Statement of Purpose
12.2	Authority
12.3	Definitions
12.4	Posting Notice of Prohibition
12.5	Smoking Prohibited
12.6	Conflict with Other Laws or Regulations
12.7	Violations
12.8	Enforcement
12.9	Severability
12.10	Effective Date

12.1 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 in 2000, the Public Health Service's National Toxicology Program listed secondhand tobacco smoke as a known human carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997),
Now, therefore, the Board of Health of the Town of Oak Bluffs 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 certain places.

12.2 AUTHORITY:

This regulation is promulgated under the authority granted to the Oak Bluffs Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(2)(j) which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or...health...regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth...or political subdivision of the commonwealth."

12.3 DEFINITIONS:

- (a) Bar: An establishment devoted to serving alcoholic beverages for on-premise consumption.
- (b) Public Indoor Place: Any indoor area or public transportation waiting area open to the general public.
- (c) Private Club: A not-for-profit establishment with a defined membership.
- (d) Public Transportation Vehicle: Any bus, taxi and other means of transportation available to the general public.
- (e) Retail Tobacco Store: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Oak Bluffs Board of Health.
- (f) Restaurant: Any establishment, including outdoor area(s) serving food for consumption on the premises which maintains tables for customers either indoors or outdoors, or both.
- (g) Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product.
- (h) Workplace: An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.
- (i) Work space or work spaces: An enclosed area occupied by an employee during the course of his employment.
- (j) Outdoor space: An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.
- (k) Smoking bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270 S22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."
- (l) Outdoor seating: Any outside area of an establishment that is under the control or management of said establishment.
- (m) Enclosed: A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.
- (n) 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 Massachusetts General Laws Chapter 180; or
 - iii. an established religious place of worship or instruction in the town of Oak Bluffs 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.

12.4 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:

- (a) "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Oak Bluffs Board of Health, or
- (b) The international "No Smoking" symbol, consisting of a representation of a burning cigarette enclosed in a red circle, having a red bar across it, comparable in size to item a) above.

REGULATIONS AFFECTING SMOKING IN CERTAIN PLACES, cont'd

12.5 SMOKING PROHIBITED:

- a. It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace.
- b. Smoking is hereby prohibited in the Town of Oak Bluffs in accordance with MGL Ch. 270, S 22.
- c. 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 Bar, Smoking Bar, Public Indoor Place, Public Transportation Vehicle, Restaurant, Workplace, or Work Spaces.

12.6 CONFLICT WITH OTHER LAWS OR REGULATIONS: Notwithstanding the provisions of the foregoing sections 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.

12.7 VIOLATIONS: Any person in control of a regulated establishment, who violates this regulation may be subject to BOTH:

- (a) A fine of one hundred dollars (\$100) for a first offense, two hundred dollars (\$200) for a second offense within one (1) year of the date of the first offense and three hundred dollars (\$300) for a third or subsequent offense within one (1) year of the date of the first offense;
- (b) Suspension of any license(s) issued by the Board of Health for that place for a period of up to two (2) days for each day of noncompliance. A license may be suspended after notice and opportunity to be heard.

12.8 ENFORCEMENT: As an alternative to initiating criminal proceedings, violations of this regulation may be enforced by the non-criminal method of disposition as provided in Massachusetts General Law, Chapter 40, Section 21D by the Board of Health or its agents. Any fines imposed under the provisions of this regulation shall inure to the Town of Oak Bluffs for such use as the town may direct.

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

(b) Any citizen who desires to register a complaint under this regulation may request that the Board of Health investigate the incident.

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

12.9 SEVERABILITY: If any paragraph or provision of this regulation is found to be illegal or against public policy or is unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

12.10 EFFECTIVE DATE: Adoption of these regulations shall supersede all prior regulations promulgated to regulate smoking in certain places.

This regulation shall be effective as of March 24, 2009.