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Board of Health  
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## Section 12A - REGULATION PROHIBITING SMOKING IN MEMBERSHIP ASSOCIATIONS

**A. Statement of Purpose:** Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eye, 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 U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen 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 Board of Health 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 membership associations, also known as private clubs.

**B. 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 Article 13, Section 5 of the Recodified General By-Laws of the Town of Oak Bluffs which added Section XV(V) to said By-Laws. Article 15, Section 5 states that in part that "nothing in this regulation shall be deemed to amend or repeal...health or other regulations so as to permit smoking in areas where it is prohibited by...health or other 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."

**C. Definitions:** For the purposes of this regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

**Business Agent:** An individual who has been designated by the owner or operator of any membership association to be the manager or otherwise in charge of said membership association.

**Enclosed:** A space bounded by walls, with or without windows or fenestrations, from floor to ceiling and enclosed by one or more doors, including, but not limited to, an office, function room or hallway.

**Membership Association (also known as a private club):** 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 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 is required for all members of the association for a period of not less than 90 days.

**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.

**“Smoking” or “smoke”:** The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

**D. Smoking Prohibited:**

1. Smoking is prohibited in all areas of membership associations, also known as private clubs.
2. It shall be unlawful for any person having control of the membership association upon which smoking is prohibited by this regulation, or the business agent or designee of such membership association, to permit a violation of this regulation.

**E. Posting Notice of Prohibition:** Every membership association 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 Town of Oak Bluffs 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 Oak Bluffs Board of Health.

**F. Violations:** Any membership association, or its business agent, who violates any provision of this, the violation of which is subject to a specific penalty, may be penalized by the noncriminal 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 membership association, or its business agent, to ensure compliance with all sections of this regulation.

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, including the current violation, a fine of three hundred dollars (\$300.00).

**G. Enforcement:** This regulation shall be enforced by the Board of Health and its designees. One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate an investigation.

**H. 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 filing a criminal complaint at the appropriate venue.

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

Penalty: \$100 for the first offense  
\$200 for the second offense within 24 months of the date of the first offense  
\$300 for the third or subsequent offense within 24 months of the current violation, including the current violation.

Enforcing Persons: The Oak Bluffs Board of Health and its designees.

**I. 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.

**J. Conflict with Other Laws or Regulations:** Notwithstanding the provisions of the foregoing Paragraph D 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.

**K. Effective Date:** This regulation shall be effective as of September 7, 2004.

Adopted October 5, 2004