

Town of Granby
Board of Health
Tobacco Control Regulations

ACCESS TO TOBACCO

SECTION I: PURPOSE

The Board of Health does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing second-hand smoke is a cause of disease, including lung cancer, in non-smokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing second hand smoke include lung cancer, heart disease, negative birth outcomes, respiratory infection, decreased respiratory function, broncho-constriction and broncho-spasm, allergies and irritations to the eyes, nose and throat.

Accordingly, the Board of Health finds and declares that the purpose of this regulation are (1) to protect the public health and welfare by prohibiting smoking in public places and (2) to guarantee the right on non-smokers to breathe smoke-free air, and to recognize that need to breathe smoke-free air shall have priority over the desire to smoke.

Further, the Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail easy access of minors to cigarettes and other tobacco products. Therefore, another purpose of this regulation is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

These regulations are adopted pursuant to Massachusetts General Laws, Chapter 111, Sections 31 and 31C.

SECTION II: DEFINITIONS

A. "Bar" means an area that 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. Although a restaurant may contain a bar, the term "Bar" shall not include the restaurant dining area.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

C. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

D. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

E. “Enclosed Area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door passage ways) which extend from the floor to the ceiling including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

F. “Place of Employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges and rest rooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a child-care or health-care facility.

G. “Public Place” means an enclosed, indoor area when open to and used by the general public, including but not limited to, the following facilities: licensed child-care locations; educational facilities; elevators accessible to the public; stairwells, halls, entrance ways, and public restrooms; libraries; schools; municipal buildings; retail food establishments; indoor sports arenas; theaters; auditoriums; and any rooms or halls when used for public meetings. A room or hall used for private social functions in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

H. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar”.

I. “Retail Tobacco Store” means a retail store utilized for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

J. “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other combustible substance in any manner or in any form.

K. “Sports Arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemblage either to engage in physical exercise, participate in athletic competition, or witness sports events.

L. “Tobacco Vending Machine” means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon insertion of coins, trade checks, or slugs.

M. “Ventilation” means a mechanical system to remove tobacco smoke. Particulate air cleaners or filtration systems are not considered ventilation. The mechanical system must remove particulates of 60 cubic feet per minute per person, and the system must be verified by a qualified Heating, Ventilation, Air-Conditioning Engineer.

SECTION III: PROHIBITION OF SMOKING IN PUBLIC PLACES

1. Retail Stores and Malls
2. Waiting rooms, hallways, wards, and semi-private rooms of health care facilities, including , but not limited to , hospitals, clinics, physical therapy facilities, doctors offices, and dentist’s offices
3. Child care facilities
4. Municipal Buildings

5. Schools (M.G.L.C. 71 SEC. 2A)
6. Elevators
7. Buses, taxicabs, and other means of public transit under the authority of the Town of Granby, and ticket, boarding, and waiting areas of public transit depots (including airports)
8. Public restrooms
9. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except where smoking is a part of the stage production.
10. Sports arenas and auditoriums
11. Polling places
12. Private Clubs

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a non-smoking establishment.

SECTION IV: WHERE SMOKING IS NOT REGULATED

A. Notwithstanding any other provision of this section to the contrary, the following areas shall not be subject to smoking restrictions:

1. Private residences, except when used as a child-care or health-care facility
2. Retail tobacco stores
3. Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle
4. Facilities or sections of facilities used primarily for gambling

B. Notwithstanding any provisions of this section, any owner, operator, manager or other person who controls any establishment as described in this section may declare that entire establishment as a non smoking establishment.

SECTION V: POSTING OF SIGNS

A. "No Smoking" signs or the international "No Smoking" symbol (considering of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.

SECTION VI: ENFORCEMENT

A. Enforcement of this article shall be implemented by the Board of Health, its staff, or other officials who may be designated by the Board of Health.

SECTION VII: VIOLATIONS AND PENALTIES

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.

C. Any person who smokes in a smoke-free area shall be subject to a fine of not less than twenty (\$20) nor more than fifty (\$50) for each violation.

D. Any proprietor(s) or other person(s) in charge of a public place who fail(s) to comply with these regulations shall be subject to both:

1. A fine of not less than twenty dollars (\$20) nor more than fifty (\$50) for each day a violation continues; and
2. Suspension of any license issued by the Board of Health for that public place for a period of up to two (2) days for each day of non compliance.

SECTION VIII: 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.

SECTION IX: TOBACCO SALES TO MINORS PROHIBITED

A. Sale to Minor – In conformance with Massachusetts General Laws, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff, or any tobacco in any of its forms to any person under the age of eighteen (18), shall be punished by a fine of not less than one hundred dollars (\$100) for the first offense, not less than two hundred (\$200) for the second offense and not less than three hundred (\$300) for any third or subsequent offense within twenty-four (24) hours.

B. Posting of State Law – In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of the Massachusetts General Law, Chapter 270, Section 6, shall be posted conspicuously by the owner, or other person in charge thereof, in the shop or other place used to sell cigarettes at retail. The notice shall be that notice provided by the Massachusetts Department of Public Health. Such notice shall be at least 48 square inches and shall be posted at the cash register, which receives the greatest volume of single cigarette package sales, in such a manner so that it may be readily seen by a person standing at, or approaching, the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than 4 feet or more than 9 feet from the floor.

The Board of Health or its enforcement officer(s) shall enforce this regulation.

Whoever violates this provision shall be punished by a fine of not more than fifty dollars (\$50). Any person unlawfully removing a copy so posted, while said premises are used for the sale of cigarettes, shall be punished with a fine of ten dollars(\$10).

C. Identification Required – No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater, unless the seller has some other conclusive basis for determining the buyer's age.

D. Permit Required – After July 10, 1995, it shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid permit from the Board of Health of the Town of Granby for each location in which tobacco products are sold. The term of the permit shall be one year if the license complies with provisions of this regulation.

- E. Fee for Permit – The fee for a one year tobacco retailer’s permit to be renewed annually at a rate to be determined by the Board of Health.
- F. Non-transferability – A tobacco retail permit is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.
- G. Vending Machines – After July 10, 1995, cigarette vending machines or any other device for the sale or distribution of tobacco products are prohibited.
- H. Out-of-Package Sales Prohibited – It is unlawful to sell cigarettes out of the manufacturer’s package with required health warnings. Sale or distribution of tobacco products in any form other than an original factory wrapped package is prohibited.
- I. Free Distribution/Free Samples Prohibited – No person shall distribute or furnish without charge or cause to be furnished or distributed without charge, cigarettes or other tobacco products in any public place or at any event open to the public within the Town of Granby.
- J. Free Standing Displays Prohibited – No person shall sell or offer for sale tobacco products by means of a free standing display, unless such display is located on or behind and does not extend beyond the main selling counter, is within 10 feet of the main sales register and is within the full view of a clerk or retail operator.
- K. Coupons/Vouchers – No person shall distribute coupons or vouchers redeemable for tobacco products within the Town of Granby. Such restrictions shall not apply to coupons in magazines, newspapers, other periodicals or affixed to packaging of tobacco products of otherwise allowed by law.
- L. Penalties
 - 1. For violation of Secion IX A:
 - a. In the case of a first violation, the permit holder shall be issued a warning and notified in writing of penalties levied for further violations, including suspension or revocation of tobacco permit.
 - b. In the case of a second violation within 24 months of the first violation, the permit holder shall be fined one hundred dollars (\$100).
 - c. In the case of a third violation within 24 months of the first violation, the permit holder shall be fined three hundred dollars (\$300).
 - d. In the case of the fourth violation within 24 months of the first violation, the permit shall be suspended for a period not less than seven days nor more than 90 days.
 - e. In the case of a fifth violation within 24 months of the first violation, the permit may be revoked for a period of 90 days to one year, and the merchant must re-apply for a permit.
 - f. During such times of permit suspension or revocation, no tobacco sales will be permitted. Other Board of Health permits may be suspended if this regulation is violated.
 - g. The Board of Health of the Town of Granby shall provide written notice to the permit holder to suspend or revoke a tobacco permit. The notice shall contain the reasons for the suspension or revocation and to establish a date and time for a public hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity

to be heard at such a hearing and shall be notified of the Board of Health's decision and reasons in writing.

Quarterly monitoring checks will occur and checks upon request or due to complaint will occur under the direction of the Board of Health. Appointed health agents will perform the compliance checks. The owner of the establishment or person named on the tobacco permit will be responsible for any and all fines and punishment.

SECTION IX: SEVERABILITY

If any provision, clause, sentence or paragraph of this regulation or application thereof of any person or circumstances shall be held invalid, which invalidity shall not affect the provisions of the regulation which can be given effect without the invalid provision or applications, and to this end the provisions are declared to be severable.

SECTION X: EFFECTIVE DATE

This regulation was originally effective July 10, 1995.
Amended: September 6, 2000

Granby Board of Health