



Town of Concord Board of Health

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SMOKING IN FOOD ESTABLISHMENTS BYLAW Adopted at Town Meeting 1995

Section 1: Purpose

The Town of Concord does hereby find and declare that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in food establishments, (2) to guarantee the right of non-smokers to breathe smoke-free air in such establishments, and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 2: Authority

This bylaw is adopted by the Town of Concord under its Home Rule powers, its police powers to protect the public health, safety and welfare, and its authority under Massachusetts General Laws, Chapter 40, Section 21.

Section 3: Severability

Each section, paragraph, sentence, clause, phrase and any other portion of this bylaw shall be construed as separate to the end that if any portion thereof shall be held invalid for any reason, then the remainder of the bylaw shall remain in full force and effect.

Section 4: Definitions

- 4.1: "Bar" means an area which 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.
- 4.2: "Board of Health" means the legally constituted Board of Health for the Town of Concord, or its authorized agents or representatives.
- 4.3: "Food Establishment" means any establishment, which is licensed by the Board of Health in accordance with,
- (a) 105 CMR 590.000, State Sanitary Code Article X - Minimum Sanitation Standards for Food Establishments, or
 - (b) 105 CMR 550.000, Regulations Relative to Bakeries and Bakery Products.

The term includes, but is not limited to; restaurants, retail food stores, residential kitchens where food is prepared for retail sale, dining rooms of bed and breakfast operations, delicatessens that offer prepared food in individual service portions, catering operations, and temporary food establishments.

The term does not include; mobile food units, pushcarts, supply vehicles, roadside markets that offer only fresh fruit and fresh vegetables for sale, food and beverage vending machines, bars, or hotel and motel conference or meeting rooms and private and public assembly rooms while these places are being used for private functions.

The term "Food Service Establishment" as used in this bylaw shall not apply to a bed & breakfast operation conducted within a private residence or a residential kitchen at any time when food is not being prepared for retail sale.

- 4.4: "Operator" means any person who,
- (a) alone or jointly or severally with others owns a food establishment regulated by 105 CMR 590.000, State Sanitary Code Article X - Minimum Sanitation Standards for Food Establishments, or bakery regulated by 105 CMR 550.000, Regulations Relative to Bakeries and Bakery Products, or
 - (b) has care, charge or control of such a food establishment or bakery as agent or lessee of the owner or as an independent operator.
- 4.5: "Person in charge" means the individual present in a food establishment who is the supervisor of the food establishment at the time of the inspection.
- 4.6: "Private function" means a business or social gathering associated with a single purpose, i.e. a conference or wedding reception that is not open to the public and is sponsored by a private party, rather than the operator of a food establishment.

Section 5: Prohibitions

- 5.1: On the effective date of this bylaw, smoking shall not be allowed in any portion of any food establishment in the Town of Concord.
- 5.2: The operator or person in charge of each food establishment shall be responsible for ensuring that no person shall smoke in that food establishment.

Section 6: Enforcement

- 6.1: Inspections - For the purpose of enforcing this bylaw, the Board of Health is authorized to enter, examine, or survey food establishments and bakeries at any reasonable time.
- 6.2: Notification of Violations - If a person in charge or operator is in violation of this bylaw, then the Board of Health shall cause a written notice or order to be served upon such person or operator. Any notice or order shall include the date, time and nature of the violation; the name of the person observing the violation; a copy of any inspection reports; notice of the right to a hearing; the deadline and proper procedures for requesting a hearing; the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary information in the possession of the Board of Health; the right to be represented at the hearing; and acknowledgement that any affected party has a right to appear at said hearing.
- 6.3: Methods of Enforcement - The Board of Health shall have the authority to enforce this bylaw through the use of violation notices, administrative orders, or civil and criminal court actions. Violations may result in fines and other lawful penalties (see Section 9).

Section 7: Hearings

- 7.1: Petition for Hearing - Any person aggrieved by a decision of any agent or employee of the Board of Health or to whom a violation notice or order has been served may petition for a hearing before the Board of Health. Such a petition must be filed in writing at the main office of the Board of Health within seven days after the violation notice or order was served, or seven days after the decision of the agent or employee.
- 7.2: Hearing Notice - Within ten days of receiving a petition, the Board of Health shall inform the petitioner and other affected parties of the date, time and place of the hearing and their right to inspect and copy any records that the Board of Health might have concerning the matter to be heard.
- 7.3: Hearing Procedures - At the hearing, the agent or employee issuing the notice or order or from whose decision the appeal is taken shall have the burden of proving the violation. The appellant shall have the right to present evidence and to cross-examine any witness. The decision by the Board may affirm or reverse the decision of the agent or employee in whole or in part. The decision shall be in writing and shall state the facts on which it is based.
- 7.4: Appeals - Any person aggrieved by the final decision of the Board of Health with respect to any order issued under the provisions of this bylaw may seek relief in a court of competent jurisdiction in the Commonwealth.

Section 8: Variances

- 8.1: Variance Permitted - The Board of Health may vary the application of any provision of this bylaw, with respect to any particular case when, in its opinion and upon facts found by the same Board, the enforcement thereof would do manifest injustice; provided, that the decision of the Board shall not conflict with the intent and purpose of this bylaw. Any variance granted by the Board shall be in writing. A copy of such variance shall, while it is in effect, be available to the public during regular business hours at the main office of the Board of Health at 141 Keyes Road.
- 8.2: Expiration, Modification, Suspension - Any variance may be subject to such qualification, revocation, suspension, or expiration as the Board of Health expresses in its grant. A variance may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard in conformity with Section 7 of this bylaw.

Section 9: Penalties and Remedies

- 9.1: Criminal Penalties - Any person who violates any provision of this bylaw shall be punished by a fine of not more than five hundred (\$500.00) dollars. Each day or portion thereof during which a violation occurs or continues shall constitute a separate offense, and each portion of this bylaw that is violated shall constitute a separate offense.
- 9.2: Non-criminal Penalties - As an alternative to criminal prosecution in some cases, the Board of Health may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Laws, Chapter 40, Section 21D as adopted by Concord Annual

Town Meeting on March 4, 1985. For the purpose of this provision, the penalty to apply in the event of a violation shall be as follows: \$25.00 for the first offense, \$50.00 for the second offense, \$100.00 for the third offense, \$200.00 for the fourth offense and \$300.00 for each subsequent offense. Each day on which a violation exists shall be deemed a separate offense.

Section 10: Effective Date

This bylaw shall take effect on January 2, 1996.