

TOWN OF NORWELL

BOARD OF HEALTH

RESTRICTIONS ON SMOKING IN PUBLIC PLACES AND WORKPLACES

Majority voted to amend the town bylaws, Articles XV, Section 15, General Regulations at town meeting on May 15, 1990. By Law changes effective September 12, 2000 – approval date of Attorney General's Office.

PROHIBITION OF SMOKING IN PUBLIC PLACES AND WORKPLACES

SECTION 15.1 **FINDING AND PURPOSE**

There exists substantial evidence that tobacco smoke has a direct causal relationship to various cancers, heart diseases and lung disorders. Increasing evidence further demonstrates that the harmful effects of tobacco are not confined to smokers but also cause severe discomfort and in some cases illnesses to non-smokers. Therefore, the purpose of this bylaw is for the protection and promotion of public health. The successful implementation of this bylaw requires a cooperative effort and mutual respect on the part of smokers and non-smokers.

SECTION 15.2 **DEFINITIONS**

For the purpose of this bylaw, the following words shall have the following meaning:

- A. **SMOKING** means the lighting of or having in one's possession or control any lighted cigar, cigarette, pipe or other tobacco product.
- B. **PUBLIC PLACE** means any enclosed area or portion thereof when such an area is open to the general public.
- C. **WORKPLACE** means any enclosed area or portion thereof in which employees perform services.
- D. **RESTAURANT** means any business, which holds a Common Victualer's license and where food is prepared or served to the general public for consumption on the premises.
- E. **ENCLOSED** means a space bounded by walls and under a roof.
- F. **EMPLOYEE** means any person, including but not limited to any contractor, who performs services for an individual, partnership, association, corporation, trust or other organized group.

- G. **APPROVED MECHANICAL AIR VENTILATION SYSTEMS** means a mechanical air handling system separate and distinct from the air handling system utilized in the non-smoking section, which shall be certified by a certified Industrial Hygienist and
1. Meets or exceeds the BOCA National Mechanical Code/1993 – the standards set forth in Chapter 16, Table M-1604.3, for the Required Mechanical Ventilation Air for Smoking Lounges; which states that a maximum occupant load of 70 persons per 1000 square feet be allowed, with 60 cubic feet per minute (CFM) per person provided.
 2. Maintains a constant pressure differential between the designated smoking area and the non-smoking area sufficient to direct air flow from the non-smoking area to the designated smoking area and prevent the flow of smoke into the non-smoking area;
 3. The mechanical exhaust system cannot recirculate any indoor air. Exhaust vents should be over smoking sections and fresh air coming into all areas from outdoors.
- H. **DESIGNATED SMOKING AREA** means an area within a restaurant or workplace where smoking is permitted pursuant to this bylaw.
- I. **BAR** means an area with seating, which is devoted to the serving of alcoholic beverages for consumption by patrons 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.

SECTION 15.3 **RESTRICTIONS TO SMOKING**

It shall be unlawful for any person to smoke in any public place or workplace except (1) in those designated smoking areas which are authorized by this bylaw and allowed by permits which may be granted by the Board of Health or (2) as otherwise authorized by this bylaw. In no case shall smoking be permitted in any restroom.

Any person or entity in control of an area in which smoking is prohibited shall conspicuously display signs upon the premises in appropriate locations and numbers indicating that smoking is prohibited.

SECTION 15.4 **EXCEPTIONS**

A. The provisions of this bylaw shall not apply to:

1. **Private Events:** Smoking may be allowed in an enclosed area within a public place which is not located in a municipal building when that entire area is being used for a private event
2. **In-Home Businesses.**
3. **Workplaces of businesses which employ a total of two employees or less.** This exception shall not apply to any workplace which shares a common ventilation system with an unaffiliated individual or entity.
4. **Nursing Homes.**

B. Smoking may be permitted within eating establishments that currently hold smoking permits and meet the following criteria as of July 1, 2000, as certified by a Certified Industrial Hygienist:

1. The Industrial Hygienist must inspect, evaluate, test and certify that the mechanical air ventilation system was installed and is operating according to the standards defined in Section 15.2 Section G of this code.
2. The certification submitted to the Board of Health each year must include a seating plot plan which defines the designated smoking area. Under no circumstances shall the seating capacity of the smoking area exceed the percentage of the original smoking permit.

C. Smoking is allowed in workplaces, provided that the designated smoking area is separated from the non-smoking area by floor to ceiling tangible and non-permeable barriers and that the designated smoking area be equipped with a separate approved mechanical air ventilation system. Employees may, but shall not be required to, perform services within the designated smoking area.

Establishments, which do not meet these criteria, shall be 100% smoke-free. These exceptions are non-transferable. Establishments, which are sold or change ownership after July 1, 2000 shall be required to be 100% smoke-free. Any food-eating establishment that currently holds a smoking permit that fails to comply with these revised regulations will automatically have their smoking permit revoked.

Any restaurant with a waiting area within a designated smoking area shall also provide a waiting area within a non-smoking area.

Any person or entity in control of a designated smoking area shall conspicuously display within the area in appropriate locations and numbers, signs indicating that smoking is permitted.

Any person or entity in control of a restaurant, bar or workplace containing an approved air ventilation system shall provide unit maintenance records and recertification to the Board of Health annually by June 1st and shall insure that the system is operating when smoke is present.

In the event of a breakdown or malfunction, in whole or in part, of a barrier, air ventilation system, smoking shall not be permitted until the barrier or system is fully repaired.

SECTION 15.5 IMPLEMENTATION

Any person or entity in control of a public place, restaurant or workplace shall implement this bylaw by:

1. providing proper signage in smoking and non-smoking areas;
2. informing any person who is smoking in the public place, restaurant or workplace in other than a designated smoking area that he or she is smoking in violation of law and requesting that the person either refrain from smoking or move to a designated smoking area; and

3. promptly notifying a Board of Health member in the event that any person continues to smoke within the public place or workplace in other than a designated smoking area after being informed that his or her smoking is in violation of law.

SECTION 15.6 **VIOLATIONS**

Any person or entity in control of a public place, restaurant or workplace that fails to implement the provisions of this bylaw shall be considered to have violated this bylaw.

Any person who smokes in a public place or workplace in other than a designated smoking area in violation of this bylaw shall be considered to have violated this bylaw.

SECTION 15.7 **COMPLAINTS**

Any person who has reason to believe that a person or entity has violated this bylaw may notify an appropriate law enforcement authority or file a complaint with the Board of Health or both. A complaint filed with the Board of Health shall be in writing, signed by the complainant, and shall set forth the time, place and details of the alleged violation.

SECTION 15.8 **HEARING**

Any person or entity against whom a complaint has been filed with the Board of Health shall be informed of the complaint and his or her right to dispute the complaint. Any person or entity choosing to dispute a complaint shall, within ten days after receiving notice, request a hearing before the Board of Health. After a hearing, a majority of the Board of Health shall either sustain or dismiss the complaint based on a preponderance of the evidence presented. If a complaint is not disputed or is sustained after hearing, the Board of Health shall issue a citation assessing a penalty in accordance with this bylaw or take any other appropriate action authorized by law.

SECTION 15.9 **ENFORCEMENT**

The Board of Health may issue a citation assessing a penalty in accordance with this bylaw whenever the Board determines that a person or entity has violated this bylaw.

SECTION 15.10 **PENALTIES**

Any person or entity that violates this bylaw shall be subject to a fine of twenty dollars (\$20.00) for a first offense, fifty dollars (\$50.00) for second offense and two hundred dollars (\$200.00) for a third and each subsequent offense.

In addition to any other penalty, the Board of Health may, after a hearing, suspend or rescind a permit granted under this bylaw, or take any other action permitted by law. In determining the severity of the action to be taken, the Board of Health shall consider, among other things, the flagrancy of the violation and the expressed willingness of the violator to implement the bylaw in the future.

SECTION 15.11 **CONFORMITY**

Any construction modifications or changes to the premises necessary to come into compliance with this bylaw must also comply with all other Federal, State and Town permits and requirements. The Building Department and the Fire Department should be consulted before any designs are finalized.

SECTION 15.12

SEVERABILITY

If any provision of this bylaw is declared invalid, the other provisions thereof shall not be affected.

By Law Changes Effective September 12, 2000 – date of approval by Attorney General