

3 Crawford Street #8
Cambridge, MA 02139
October 13, 1998

Councillor Katherine Triantafillou
90 Reed Street
Cambridge, MA 02140

Dear Councillor Triantafillou:

I am writing to express my opposition to further smoking restrictions in Cambridge. My opposition is based on three facts. First, the current ordinance gives those who wish to avoid secondhand smoke abundant opportunity to do so while allowing restaurant owners, smokers, and persons for whom secondhand smoke is not an issue to make their own decisions regarding this matter. Second, the scientific evidence does not support further restrictions. And third, further restrictions would be unfair.

There are more than one hundred Cambridge restaurants which forbid smoking entirely. Several bars ban smoking and in many smoking is almost nonexistent. While there are a few coffee shops where one can smoke, Starbucks, Dunkin Donuts, Au Bon Pain, and others forbid it. Customers are voting with their feet and business owners are basing their policies on what they, their customers, and their employees want. These persons do not need or wish protection, but to be left alone.

Tobacco control advocates cite the 1992 EPA report as the definitive study proving that secondhand smoke is a health hazard. Many scientists have criticized this study as being more political than scientific. In 1995 the Congressional Research Service, an independent research agency of Congress, in a 75-page report criticized the EPA and determined that the "statistical evidence does not appear to support a conclusion that there are substantial health effects of passive smoking" (Environmental Tobacco Smoke and Lung Cancer Risk, Congressional Research Service, 1995). This year the same federal judge who had decided against the tobacco companies regarding FDA control of tobacco, ruled that the EPA had abandoned scientific method and "cherry picked" evidence to support a conclusion that secondhand smoke is dangerous (Boston Globe, 7-20-98). The Boston Globe editorialized that the EPA had misused science to support the antismoking movement (7-24-98).


In March, of this year, the World Health Organization completed the largest secondhand smoke study ever done in Europe. Despite disclaimers by the WHO this ten-year study, like that of the EPA, failed to find a link between secondhand smoke and lung cancer (Wall Street Journal 3-19-98) ([London] Times 3-9-98).

Tobacco reformers maintain that the evidence is conclusive, but despite political pressure, scientific studies consistently fail to demonstrate a link between secondhand smoke and disease.

Tobacco control is social control. It is the effort of certain persons to make decision for others. As a higher proportion of blue collar and middle class persons smoke than do the more affluent, tobacco control is also a class issue. Often it is those of moderate income (who are more likely to smoke) and the establishments that depend on them which tobacco reformers wish to control.

Former Senator George McGovern wrote that "The new paternalism threatens our freedom to make our own choices" (New York Times, 8-14-97). The public as well as Cambridge restaurant owners are capable and have the right to make their own decisions about smoking. They have, under the current ordinance, some freedom to do so. I respectfully ask that you not support further smoking restrictions in Cambridge.

Yours truly,


Stephen Helfer

City of Cambridge- draft 12
SMOKING PROHIBITED IN PUBLIC PLACES AND WORKPLACES
PUBLIC HEALTH REGULATION

Section I. Public Places

A. Statement of Purpose:

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, and 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 environmental tobacco smoke (ETS), which includes both exhaled smoke and the sidestream smoke from burning cigarettes, causes the death of 53,000 Americans each year; and whereas the Environmental Protection Agency (1993) has designated environmental tobacco smoke to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure; now, therefore, the Commissioner of Health and Hospitals 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 public places and workplaces.

B. Authority: This regulation is promulgated under the authority granted to the Cambridge Health Alliance under Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

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

Cambridge Public Health Commission: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge

Commissioner: The Commissioner of Health and Hospitals of the City of Cambridge, appointed pursuant to St. 1976, c. 201.

Enclosed Area: Means a space bounded by walls and under a roof or ceiling.

Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Inspectional Services: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code and certain articles of the State Sanitary Code and Cambridge municipal code.

License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within the City of Cambridge.

Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.

Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.

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 agents or designees of any of the foregoing.

Private Club: A nonprofit entity with a paid membership.

Public park: Means and includes all outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.

Public place: An enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.

Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.

Restaurant: Any eating or entertainment establishment which possesses a Common Victualer License under the provisions of G.L. c. 140. In addition, the establishment could hold a beer and wine or all alcohol pouring license.

Restaurant with certain categories of entertainment: A restaurant with an occupancy of at least 200 which possesses a common victualer license and/or alcohol license as approved by the License Commission and which possesses an entertainment license as approved by the License Commission in the following categories: dancing by patrons, live entertainment, live music or dancing exhibitions. Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined herein.

Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.

Smokeshop: Retail stores where the primary business is the sale of tobacco products;

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

D. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any of the following places as defined herein: health care facilities, malls, municipal buildings including school grounds, public parks, public places or public transportation vehicles, restaurants, retail stores, retail food stores, except as otherwise provided in paragraph H of this Section I. of this regulation.

E. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph D of Section I. of this regulation may elect to prohibit smoking.

F. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs 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).

G. No Smoking:

No person shall smoke in any place where smoking is prohibited or restricted by this regulation. No person shall remove a no smoking sign posted under the authority of paragraph F of this Section I. of this regulation.

H. Exceptions:

Notwithstanding the provisions of paragraphs D and E of this Section I. of this regulation, smoking may be permitted in the following places and/or circumstances:

- (1) Private residences, except when used as a licensed child care facility or health care facility;
- (2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.
- (3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;
- (4) Inn, hotel and motel conference/meeting rooms, enclosed restaurant function rooms and private and public assembly rooms while these places are being used for private functions;
- (5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;
- (6) Smokeshops;
- (7) Performers upon the stage, provided that the smoking is part of a theatrical production;
- (8) Religious ceremonies where smoking is part of the ritual;
- (9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this regulation;
- (10) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;
- (11) A smoking area may be designated in restaurants with certain categories of entertainment that receive a variance from the Public Health Commissioner or his/her designee. Variances can only be considered for time periods in which the establishment is restricted to individuals 21 or older and the service of food is incidental. Once the variance has been granted, the establishment must post appropriate signage provided by the Public Health Commission;
- (12) A smoking area may be designated in restaurants where food is incidental to alcohol;
- (13) A smoking area may be designated where psychiatric support groups meet if the Commissioner or his designee determines that compliance with this regulation would frustrate the purpose of those groups and/or facilities. A person seeking such designation must receive a variance from the Public Health Commissioner or his/her designee; and
- (14) A smoking area may be designated in an area of a public place, restaurant, or retail store that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this regulation. An enclosed smoking area in which employees or residents may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees and residents to clean, breathable air free of environmental tobacco smoke.

I. Variance procedure:

Any entity subject to these regulations may apply to the Commissioner or his/her designee for a variance to waive any provision of these regulations. Every request for a variance shall be made in writing on a form provided by the Public Health Commission and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of \$100.00 shall

accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:

- (1) The efforts made by the entity to comply with the regulations;
- (2) Whether granting the waiver will result in an appreciable danger to the public health;
- (3) Whether enforcement of the regulation will cause manifest injustice to the entity.

J. Conflict with other laws or regulations:

Notwithstanding the provisions of the foregoing paragraph G of this Section I. of this regulation, nothing in this Section I. of 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. Violations: Any person who violates this Section I. of this regulation shall be subject to a fine in an amount of fifty dollars (\$50) for a first offense, one hundred dollars (\$100) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

L. Enforcement: As an alternative to initiating criminal proceedings, violations of this Section I. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this Section J. of this regulation shall enure to the Cambridge Public Health Commission.

Any citizen who desires to register a complaint under this Section I. of this regulation may initiate enforcement with the Public Health Commission.

M. If any paragraph or provision of this Section I. of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining section being in force.

Implementation of this regulation will occur in June of 1999.

accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:

- (1) The efforts made by the entity to comply with the regulations;
- (2) Whether granting the waiver will result in an appreciable danger to the public health;
- (3) Whether enforcement of the regulation will cause manifest injustice to the entity.

J. Conflict with other laws or regulations:

Notwithstanding the provisions of the foregoing paragraph G of this Section I. of this regulation, nothing in this Section I. of 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. Violations: Any person who violates this Section I. of this regulation shall be subject to a fine in an amount of fifty dollars (\$50) for a first offense, one hundred dollars (\$100) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

L. Enforcement: As an alternative to initiating criminal proceedings, violations of this Section I. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this Section J. of this regulation shall enure to the Cambridge Public Health Commission.

Any citizen who desires to register a complaint under this Section I. of this regulation may initiate enforcement with the Public Health Commission.

M. If any paragraph or provision of this Section I. of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining section being in force.

Implementation of this regulation will occur in June of 1999.

City of Cambridge- draft 12
SMOKING PROHIBITED IN PUBLIC PLACES AND WORKPLACES
PUBLIC HEALTH REGULATION

Section II. Workplaces

A. Nothing in the foregoing section I of this regulation shall apply to the following section II of this regulation. Nothing in this section II of this regulation shall apply to the foregoing section I of this regulation.

B. 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 environmental tobacco smoke (ETS), which includes both exhaled smoke and the sidestream smoke from burning cigarettes, causes the death of 53,000 Americans each year; and whereas the Environmental Protection Agency (1993) has designated environmental tobacco smoke to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure; now, therefore, the City of Cambridge 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 public places and workplaces.

C. Authority: This regulation is promulgated under the authority granted to the Cambridge Health Alliance under the Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

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

Cambridge Public Health Commission: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge.

Commissioner: the Commissioner of the Health and Hospitals of the City of Cambridge, appointed pursuant to St. 1976, c. 201.

Employee: Any individual person who performs services for an employer.

Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of two (2) or more individual employees.

Enclosed Area: means a space bounded by walls and under a roof or ceiling.

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 agents or designees of any of the foregoing.

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.

Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this regulation or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

E. It shall be unlawful for any person to smoke in any workplace in the City of Cambridge. Smoking areas may be designated in worksites which receive a variance from the Commissioner or his/her designee.

F. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

G. Each employer or other person having control of premises upon which smoking is prohibited by this Section II. of this regulation, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs 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).

H. It shall be unlawful for any employer or other person having control of premises upon which smoking is prohibited by this Section II. of this regulation, or the agent or designee of such person, to permit a violation of this Section II. of this regulation.

I. Nothing in this Section II. of this regulation shall be construed to require smoking areas. A policy which prohibits smoking throughout a workplace shall always satisfy the requirement that a smoking policy be established, but shall not exempt the employer from the other provisions of this Section II. of this regulation.

J. Any person who violates this Section II. of this regulation shall be subject to a fine in an amount of fifty dollars (\$50) for a first offense, one hundred dollars (\$100) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

K. Enforcement:

As an alternative to initiating criminal proceedings, violations of this Section II. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this Section II. of this regulation shall enure to the Cambridge Public Health Commission.

Any citizen who desires to register a complaint under this Section II. of this regulation may initiate enforcement with the Public Health Commission.

L. Severability: If any paragraph or provision of this Section II. of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraph or provision being in force.

Implementation of this regulation will occur in June of 1999.

City of Cambridge-draft 12

SALE OF TOBACCO PRODUCTS TO MINORS REGULATION

A. Declarations of Findings & Policy:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and, whereas at least one-half of all smokers begin smoking before the age of eighteen (18); and, whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and, whereas nicotine in tobacco has been found by the United States Surgeon General to be a powerfully addictive drug; and, whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and, whereas a city regulation requiring proof of age in order to purchase tobacco products is necessary in order to restrict the access of minors to tobacco products in the interest of public health; now, therefore, it is the policy of the City of Cambridge to discourage minors from experimenting with tobacco and to make tobacco products less accessible to minors.

B. Authority: This regulation is promulgated under the authority granted to the Cambridge Health Alliance under the Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

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

Cambridge Public Health Commission: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: The City of Cambridge.

Commissioner: The Commissioner of the Health and Hospitals of the City of Cambridge, appointed pursuant to st. 1976, c. 201.

Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Inspectional Services: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code and certain articles of the State Sanitary Code

Minor: Any individual who is under the age of eighteen (18).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

Tobacco product: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

D. Sales to minors prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor or, not being the minor's parent or guardian, no person shall give tobacco products to a minor.

2. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products and which states: "Massachusetts state law prohibits the sale of tobacco products to any person under the age of eighteen (18) years of age. See M.G.L. chap. 270, sect. 6." Said notice shall be that notice provided by the Massachusetts Department of Public Health and available from the Cambridge Public Health Department.

3. Identification: Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.

E. Tobacco sales permit:

1. No person shall sell or otherwise distribute tobacco within the city without first obtaining a tobacco sales permit issued by Inspectional Services.
2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof) and compliance with this Cambridge Public Health Regulation.
3. Each applicant is required to sign a statement declaring that the applicant has read and understood said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.
4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.
5. A separate permit is needed for each location.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

F. Free distribution. No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes, or any agent or employee of such person, shall distribute a cigarette or other tobacco or smoking product free to any person. Furthermore, no person shall distribute a cigarette or other tobacco product to a minor.

G. Packaging. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

H. Self Service Displays. All self-service displays of tobacco products are prohibited. The only exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

I. Tobacco products vending machines: No person shall distribute or sell tobacco products by the use of a vending machine unless:

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;
2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and
3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

J. Violations and penalties:

1. A person who violates the provisions of paragraph D-1 of this regulation shall be subject to a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200) for the second offense and three hundred dollars (\$300) for the third and each subsequent offense within a twenty-four month period.
2. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this regulation upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date 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 hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.
3. A violation of any provision of this regulation other than paragraph D-1 shall be subject to a fine of twenty-five dollars (\$25). Every day in which a person engages in conduct prohibited by this regulation shall constitute a single and separate violation.

4. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the suspension of the tobacco sales permit granted pursuant to this regulation. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date 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 hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

K. Enforcement: As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in the manner provided in MGL chap. 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this regulation shall enure to the Cambridge Public Health Commission.

L. 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 section being in force.

Implementation of this regulation will occur in March of 1999.

Secondhand Smoke: The Facts

Secondhand smoke, also known as environmental tobacco smoke, is a mixture of smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from a smoker's lungs.

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.

(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.

(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke are between 440-450% higher in bars that allow smoking than in residential settings.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

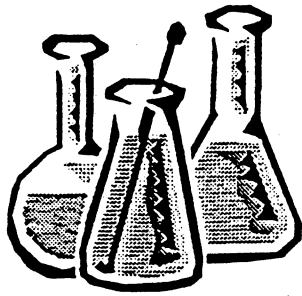
The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.

(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.

(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

Data collected by The Five City Tobacco Control Collaborative, a project of the Health Departments of Cambridge, Chelsea, Everett, Revere, and Somerville.



Secondhand Smoke: A Witches' Brew of Toxic Chemicals

Secondhand Smoke: A Group A Carcinogen

The Environmental Protection Agency has classified secondhand smoke as a group A carcinogen: a substance known to cause cancer in humans for which there is no safe level of exposure.⁷ This puts secondhand smoke into the same class of toxic chemicals as these other group A carcinogens: arsenic, asbestos, benzene, radionuclides, and radon (Table 1).

Table 1. Partial List of Group A Carcinogens

Secondhand smoke
Arsenic
Asbestos
Benzene
Benzidine
Chloromethyl Methyl Ether
Chromium
Radionuclides
Radon
Vinyl Chloride

Chemicals and Carcinogens in Secondhand Smoke

Tobacco smoke contains more than 4,000 chemicals, of which at least 40 are established carcinogens.⁹ Secondhand smoke contains most of the same chemicals as the smoke that active smokers breathe; however, the concentration of the most toxic and carcinogenic chemicals is much higher in secondhand smoke.

Several of the carcinogens in secondhand smoke are listed in Table 2.

**Table 3. Chemicals in Secondhand Smoke
and Their Other Uses**

<i>Chemical</i>	<i>Use</i>
Acetone	Nail polish remover
Acetic acid	Vinegar
Acrolein	Industrial solvent
Arsenic	Poison
Butane	Cigarette lighter fluid
Cadmium	Rechargeable batteries
Carbon monoxide	Colorless, odorless, poison gas
DDT	Insecticides
Formaldehyde	Preserver of body tissue
Hexamine	Barbecue lighter
Hydrogen cyanide	Gas chamber poison
Methane	Swamp gas
Methanol	Rocket fuel
Naphthalene	Mothballs
Nicotine	Insecticide
Nitrobenzene	Gasoline additive
Nitrous oxide phenols	Disinfectant
Polycyclic aromatic hydrocarbons	Diesel fumes
Toluene	Industrial solvent

Source: Glantz SA. *Tobacco, Biology & Politics*. San Francisco, CA: Health Edco, 1992.

Secondhand Smoke: The Leading Source of Toxic Chemical Exposure

For most people, secondhand smoke is the leading source of toxic chemical exposure. The number of cancer deaths alone caused by secondhand smoke is higher than the total number of cancer deaths from all of the following environmental pollutants combined (Figure 4)^{10,11}:

- all outdoor air pollutants (radionuclides, asbestos, arsenic, benzene, coke oven emissions, and vinyl chloride)

Restaurants where food is incidental

exception 12

B

10/5/98

Establishment	Street name	Street number	City	food incidental	variance possible
Guido's	Belmont St.	13-15	Cambridge	Yes	No
Bow and Arrow Pu	Bow St.	1	Cambridge	Yes	No
T.T. The Bear's Pl	Brookline St.	10-18	Cambridge	Yes	Yes
Campus/Manray	Brookline Street	21	Cambridge	Yes	Yes
Courtside	Cambridge St.	291	Cambridge	Yes	No
Pugliese Restoran	Cambridge St.	635	Cambridge	Yes	No
Sunset Grille	Cambridge St.	851	Cambridge	Yes	No
Eddy's Place	Cambridge Street	877	Cambridge	Yes	No
The Hideaway	Concord Lane	20	Cambridge	Yes	Yes
Ryles	Hampshire St.	212	Cambridge	Yes	Yes
Paradise Cafe Inc	Mass Ave	180	Cambridge	Yes	Yes
Cambridgeport Sal	Mass Ave	297	Cambridge	Yes	No
Cantab Lounge an	Mass Ave.	728	Cambridge	Yes	No
The Plough and Th	Mass Ave.	912	Cambridge	Yes	No
Paddy's Lunch Inc	Walden st	260	Cambridge	Yes	No
Joey Mac's	Warren St.	23	Cambridge	Yes	No
The Western Front	Western Ave	343	Cambridge	Yes	No

dca

B

Secondhand Smoke: The Facts

Secondhand smoke, also known as environmental tobacco smoke, is a mixture of smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from a smoker's lungs.

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.

(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.

(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke are between 440-450% higher in bars that allow smoking than in residential settings.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.

(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.

(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989.)

Data collected by The Five City Tobacco Control Collaborative, a project of the Health Departments of Cambridge, Chelsea, Everett, Revere, and Somerville.

Support for Smoke-Free Restaurants in Massachusetts*

- Athol: Random phone survey of 240 residents. 88% said they would still go to their favorite restaurant if they were required to be smoke free. (2/97)
- Brookline: After Brookline's Smoking Ban in restaurants, a study noted that there was no significant impact on the number of people who ate in Brookline's restaurants. (Boston University School of Public Health, 1995)
- Fitchberg: Random phone survey of 201 residents. 85% would still eat out if all restaurants in Fitchberg were smoke free. (8/95 and 9/95)
- Gardner: Random phone survey of 200 residents. 90% would still eat out in Gardner if restaurants were smoke free. (8/95)
- Leominster: Random phone survey of 204 residents. 87% would still eat out in Leominster if restaurants were smoke free. (6/95 and 7/95)

Support for Smoke-Free Public Places in Massachusetts*

- Chelsea: Random street survey of 877 individuals. 91% said they believed that second hand smoke is harmful to others. (1/98)
- Orleans: 3,335 voters surveyed outside polling stations on Election Day. 74% supported smoke free regulations for public places (including restaurants) and in the work place. (9/96)
- Worcester: 500 residents responded to a mail survey. 87% said they believed that second hand smoke may cause health problems and 79% said they would support ordinances regulating smoking in public places (including restaurants). (10/96)
- Worcester: Of 21,479 votes cast, 70.8% voted in favor of the non-binding referendum which supports the adoption of a city ordinance that would prohibit smoking in all buildings open to the public. (City Ballot, 11/97)

National Support for Smoke-Free Restaurants

- A study conducted in 15 cities with smoke free ordinances throughout the country found that the ordinances did not lower overall restaurant sales. (American Journal of Public Health, 7/94)
- An Arizona study found that in a city where smoking was banned in restaurants, 4 times as many people supported the ordinance as compared to those who opposed it. (Journal of Community Health, 4/96)
- A study of 763 residents of New York found that 87% of the people surveyed would eat out as often or more often if the restaurants were smoke free. (Gallup Public Opinion Survey, 10/94)

*Unless noted, city health departments conducted all surveys.

Surveys reviewed and compiled by Julie Herbstman, intern with 5 City Tobacco Control Collaborative.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 98-2955-A

MASSACHUSETTS RESTAURANT ASSOCIATION, INC.
Plaintiff

VS.

BOSTON PUBLIC HEALTH COMMISSION

and

DAVID MULLIGAN, COMMISSIONER
Defendants

RULING UPON PLAINTIFF'S APPLICATION
FOR PRELIMINARY INJUNCTIVE RELIEF

RULING

Upon careful consideration of the pleadings, of the substantial factual materials submitted by all parties (including affidavits, affidavit exhibits, and deposition transcripts), of their memoranda of law, and of the oral arguments at hearing, the court DENIES the application of the plaintiff Massachusetts Restaurant Association, Inc. for preliminary injunctive relief against the operation of the Regulation for Restaurant Smoking Restrictions adopted by the defendant Boston Public Health Commission on March 19, 1998, and scheduled for effect as of September 30, 1998.

GROUND

The court has assessed the plaintiff Restaurant Association's request for a preliminary injunction under the settled standards of the leading precedent. Packaging Industry Group, Inc. v. Cheney, 380 Mass 609, 616-622 (1980). To merit the preliminary injunction the applicant should show (1) a likelihood of success upon the ultimate merits of its claim; (2) actionable irreparable harm in the absence of the injunctive protection; (3) a favorable or overriding balance of actionable harm against harm claimed by the defendant as the result of the imposition of the injunction; and (4) the weight of any public interest affected by the allowance or denial of the injunction.

1. Likelihood of success on the ultimate merits. The Restaurant Association has not established a probability of success upon its legal theories (a) that the Regulation fails to constitute a "reasonable" health measure as required by its enabling statute, M.G.L. c. 111, § 31, because its several qualifications and exceptions defeat its main purpose to protect the public, and especially the elderly, the young, and infirm, from the dangers of environmental tobacco smoke in restaurants; (b) that the Commission improperly granted certain qualifications and exceptions to the smoking restrictions as accommodations of the economic losses resulting to restaurants from the public health measure; and (c) that the Regulation was impermissibly vague in its definitions and distinctions of regulated "restaurants" and less regulated "bars," "bar areas", and "private function rooms."

After examination of all the precedents cited by both sides upon each of these theories, I conclude that the Restaurant Association is not likely to prevail upon any of them or their similar formulations as constitutional due process and equal protection claims in the Complaint. The plaintiff has not cited, and I have not found by independent search, any Massachusetts precedent

supporting any of these rationales. The several cases cited from other jurisdictions are distinguishable by their facts and by the absence of a public health police power doctrine as expansive as that of Massachusetts. The great preponderance of Massachusetts decisional law and of analogous United States Supreme Court precedents (much of it collected in the Commission's memorandum of law) upholds the validity of statutes and regulations of the kind challenged here.

In short, the qualifications permitted by the Boston Regulation do not render the restaurant smoking restrictions ineffectual so as to defeat its purpose and to reduce it to an unreasonable public health measure (one curtailing the business of restaurants for no valid public health gain). The distinctions between thoroughly regulated "restaurants" and less regulated "bars," "bar areas," and "private function rooms" are understandable and workable, and not vague. And the Commission is not prohibited from accommodating or cushioning the adverse economic consequences of the smoking restrictions upon restaurant (if it chose to do so) by limiting, rather than abolishing, smoking activity in bar areas and private function rooms.

2. Irreparable harm to the restaurants. The Restaurant Association's prediction of irreparable harm by reason of immeasurable loss of revenue and good will is somewhat speculative. More importantly, the irreparable harm alleged must result from apparently actionable or unlawful action by the governmental defendant. Packing Industries Group, Inc. v. Cheney, 380 Mass. at 617 ("what matters ... is not the raw amount of irreparable harm... but rather the risk of such harm in light of the party's chance of success on the merits.") The Restaurant Association has not shown irreparable harm together with favorable prospects on the merits. The two must coincide.

3. Counterveiling irreparable harm; 4. the public interest. In an injunctive action against a governmental agency pursuing a health or welfare objective, these two criteria merge into the same consideration: what consequence does an injunction impose upon the public health purpose (viewed again in light of the probable legal merits)? Here the Regulation is more probably valid than not. Further, the postponement of its operation for a year or so by a preliminary injunction would expose the public and especially its susceptible groups (as mentioned in the Regulation preamble, the elderly, the young, and the ill) and restaurant employees to environmental smoke dangers in restaurants for that interval. That potential harm seems serious and overriding. In light of the rationally suspected role of such smoke as a cause or as an exacerbation of cancer, cardiovascular disease, respiratory illness, ear-nose-and-throat problems, allergies, and eye irritations, we could not measure the casualty rate of an injunctive delay in the implementation of the Regulation and, of course, could not repair the harm to anyone suffering the cause or the aggravation of serious resulting illness during that period. In short, the balance of danger and of the public interest weighs against interference with the Regulation as the litigation goes forward.

[signed] Mitchell J. Sikora, Jr.
Justice of the Superior Court

Dated: September 25, 1998.

City of Cambridge- draft 12
SMOKING PROHIBITED IN PUBLIC PLACES AND WORKPLACES
PUBLIC HEALTH REGULATION

Section I. Public Places

A. Statement of Purpose:

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, and 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 environmental tobacco smoke (ETS), which includes both exhaled smoke and the sidestream smoke from burning cigarettes, causes the death of 53,000 Americans each year; and whereas the Environmental Protection Agency (1993) has designated environmental tobacco smoke to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure; now, therefore, the Commissioner of Health and Hospitals 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 public places and workplaces.

B. Authority: This regulation is promulgated under the authority granted to the Cambridge Health Alliance under Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

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

Cambridge Public Health Commission: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge

Commissioner: The Commissioner of Health and Hospitals of the City of Cambridge, appointed pursuant to St. 1976, c. 201.

Enclosed Area: Means a space bounded by walls and under a roof or ceiling.

Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Inspectional Services: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code and certain articles of the State Sanitary Code and Cambridge municipal code.

License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within the City of Cambridge.

Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.

Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.

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 agents or designees of any of the foregoing.

Private Club: A nonprofit entity with a paid membership.

Public park: Means and includes all outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.

Public place: An enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.

Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.

Restaurant: Any eating or entertainment establishment which possesses a Common Victualer License under the provisions of G.L. c. 140. In addition, the establishment could hold a beer and wine or all alcohol pouring license.

Restaurant with certain categories of entertainment: A restaurant with an occupancy of at least 200 which possesses a common victualer license and/or alcohol license as approved by the License Commission and which possesses an entertainment license as approved by the License Commission in the following categories: dancing by patrons, live entertainment, live music or dancing exhibitions. Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined herein.

Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.

Smokeshop: Retail stores where the primary business is the sale of tobacco products;

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

D. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any of the following places as defined herein: health care facilities, malls, municipal buildings including school grounds, public parks, public places or public transportation vehicles, restaurants, retail stores, retail food stores, except as otherwise provided in paragraph H of this Section I. of this regulation.

E. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph D of Section I. of this regulation may elect to prohibit smoking.

F. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs 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).

G. No Smoking:

No person shall smoke in any place where smoking is prohibited or restricted by this regulation. No person shall remove a no smoking sign posted under the authority of paragraph F of this Section I. of this regulation.

H. Exceptions:

Notwithstanding the provisions of paragraphs D and E of this Section I. of this regulation, smoking may be permitted in the following places and/or circumstances:

- (1) Private residences, except when used as a licensed child care facility or health care facility;
- (2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.
- (3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;
- (4) Inn, hotel and motel conference/meeting rooms, enclosed restaurant function rooms and private and public assembly rooms while these places are being used for private functions;
- (5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;
- (6) Smokeshops;
- (7) Performers upon the stage, provided that the smoking is part of a theatrical production;
- (8) Religious ceremonies where smoking is part of the ritual;
- (9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this regulation;
- (10) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;
- (11) A smoking area may be designated in restaurants with certain categories of entertainment that receive a variance from the Public Health Commissioner or his/her designee. Variances can only be considered for time periods in which the establishment is restricted to individuals 21 or older and the service of food is incidental. Once the variance has been granted, the establishment must post appropriate signage provided by the Public Health Commission;
- (12) A smoking area may be designated in restaurants where food is incidental to alcohol;
- (13) A smoking area may be designated where psychiatric support groups meet if the Commissioner or his designee determines that compliance with this regulation would frustrate the purpose of those groups and/or facilities. A person seeking such designation must receive a variance from the Public Health Commissioner or his/her designee; and
- (14) A smoking area may be designated in an area of a public place, restaurant, or retail store that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this regulation. An enclosed smoking area in which employees or residents may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees and residents to clean, breathable air free of environmental tobacco smoke.

I. Variance procedure:

Any entity subject to these regulations may apply to the Commissioner or his/her designee for a variance to waive any provision of these regulations. Every request for a variance shall be made in writing on a form provided by the Public Health Commission and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of \$100.00 shall

accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:

- (1) The efforts made by the entity to comply with the regulations;
- (2) Whether granting the waiver will result in an appreciable danger to the public health;
- (3) Whether enforcement of the regulation will cause manifest injustice to the entity.

J. Conflict with other laws or regulations:

Notwithstanding the provisions of the foregoing paragraph G of this Section I. of this regulation, nothing in this Section I. of 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. Violations: Any person who violates this Section I. of this regulation shall be subject to a fine in an amount of fifty dollars (\$50) for a first offense, one hundred dollars (\$100) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

L. Enforcement: As an alternative to initiating criminal proceedings, violations of this Section I. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this Section J. of this regulation shall enure to the Cambridge Public Health Commission.

Any citizen who desires to register a complaint under this Section I. of this regulation may initiate enforcement with the Public Health Commission.

M. If any paragraph or provision of this Section I. of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining section being in force.

Implementation of this regulation will occur in June of 1999.

accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:

- (1) The efforts made by the entity to comply with the regulations;
- (2) Whether granting the waiver will result in an appreciable danger to the public health;
- (3) Whether enforcement of the regulation will cause manifest injustice to the entity.

J. Conflict with other laws or regulations:

Notwithstanding the provisions of the foregoing paragraph G of this Section I. of this regulation, nothing in this Section I. of 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. Violations: Any person who violates this Section I. of this regulation shall be subject to a fine in an amount of fifty dollars (\$50) for a first offense, one hundred dollars (\$100) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

L. Enforcement: As an alternative to initiating criminal proceedings, violations of this Section I. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this Section J. of this regulation shall enure to the Cambridge Public Health Commission.

Any citizen who desires to register a complaint under this Section I. of this regulation may initiate enforcement with the Public Health Commission.

M. If any paragraph or provision of this Section I. of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining section being in force.

Implementation of this regulation will occur in June of 1999.

City of Cambridge- draft 12
SMOKING PROHIBITED IN PUBLIC PLACES AND WORKPLACES
PUBLIC HEALTH REGULATION

Section II. Workplaces

A. Nothing in the foregoing section I of this regulation shall apply to the following section II of this regulation. Nothing in this section II of this regulation shall apply to the foregoing section I of this regulation.

B. 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 environmental tobacco smoke (ETS), which includes both exhaled smoke and the sidestream smoke from burning cigarettes, causes the death of 53,000 Americans each year; and whereas the Environmental Protection Agency (1993) has designated environmental tobacco smoke to be a Class A carcinogen similar to radon and asbestos with no known safe levels of exposure; now, therefore, the City of Cambridge 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 public places and workplaces.

C. Authority: This regulation is promulgated under the authority granted to the Cambridge Health Alliance under the Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

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

Cambridge Public Health Commission: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: the City of Cambridge.

Commissioner: the Commissioner of the Health and Hospitals of the City of Cambridge, appointed pursuant to St. 1976, c. 201.

Employee: Any individual person who performs services for an employer.

Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of two (2) or more individual employees.

Enclosed Area: means a space bounded by walls and under a roof or ceiling.

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 agents or designees of any of the foregoing.

Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.

Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.

Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this regulation or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

E. It shall be unlawful for any person to smoke in any workplace in the City of Cambridge. Smoking areas may be designated in worksites which receive a variance from the Commissioner or his/her designee.

F. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

G. Each employer or other person having control of premises upon which smoking is prohibited by this Section II. of this regulation, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs 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).

H. It shall be unlawful for any employer or other person having control of premises upon which smoking is prohibited by this Section II. of this regulation, or the agent or designee of such person, to permit a violation of this Section II. of this regulation.

I. Nothing in this Section II. of this regulation shall be construed to require smoking areas. A policy which prohibits smoking throughout a workplace shall always satisfy the requirement that a smoking policy be established, but shall not exempt the employer from the other provisions of this Section II. of this regulation.

J. Any person who violates this Section II. of this regulation shall be subject to a fine in an amount of fifty dollars (\$50) for a first offense, one hundred dollars (\$100) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

K. Enforcement:

As an alternative to initiating criminal proceedings, violations of this Section II. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this Section II. of this regulation shall enure to the Cambridge Public Health Commission.

Any citizen who desires to register a complaint under this Section II. of this regulation may initiate enforcement with the Public Health Commission.

L. Severability: If any paragraph or provision of this Section II. of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraph or provision being in force.

Implementation of this regulation will occur in June of 1999.

City of Cambridge-draft 12

SALE OF TOBACCO PRODUCTS TO MINORS REGULATION

A. Declarations of Findings & Policy:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and, whereas at least one-half of all smokers begin smoking before the age of eighteen (18); and, whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and, whereas nicotine in tobacco has been found by the United States Surgeon General to be a powerfully addictive drug; and, whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and, whereas a city regulation requiring proof of age in order to purchase tobacco products is necessary in order to restrict the access of minors to tobacco products in the interest of public health; now, therefore, it is the policy of the City of Cambridge to discourage minors from experimenting with tobacco and to make tobacco products less accessible to minors.

B. Authority: This regulation is promulgated under the authority granted to the Cambridge Health Alliance under the Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

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

Cambridge Public Health Commission: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.

City: The City of Cambridge.

Commissioner: The Commissioner of the Health and Hospitals of the City of Cambridge, appointed pursuant to st. 1976, c. 201.

Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Inspectional Services: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code and certain articles of the State Sanitary Code

Minor: Any individual who is under the age of eighteen (18).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

Tobacco product: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

D. Sales to minors prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor or, not being the minor's parent or guardian, no person shall give tobacco products to a minor.

2. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products and which states: "Massachusetts state law prohibits the sale of tobacco products to any person under the age of eighteen (18) years of age. See M.G.L. chap. 270, sect. 6." Said notice shall be that notice provided by the Massachusetts Department of Public Health and available from the Cambridge Public Health Department.

3. Identification: Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.

E. Tobacco sales permit:

1. No person shall sell or otherwise distribute tobacco within the city without first obtaining a tobacco sales permit issued by Inspectional Services.
2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof) and compliance with this Cambridge Public Health Regulation.
3. Each applicant is required to sign a statement declaring that the applicant has read and understood said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.
4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.
5. A separate permit is needed for each location.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

F. Free distribution. No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes, or any agent or employee of such person, shall distribute a cigarette or other tobacco or smoking product free to any person. Furthermore, no person shall distribute a cigarette or other tobacco product to a minor.

G. Packaging. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

H. Self Service Displays. All self-service displays of tobacco products are prohibited. The only exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

I. Tobacco products vending machines: No person shall distribute or sell tobacco products by the use of a vending machine unless:

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;
2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and
3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

J. Violations and penalties:

1. A person who violates the provisions of paragraph D-1 of this regulation shall be subject to a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200) for the second offense and three hundred dollars (\$300) for the third and each subsequent offense within a twenty-four month period.
2. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this regulation upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date 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 hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.
3. A violation of any provision of this regulation other than paragraph D-1 shall be subject to a fine of twenty-five dollars (\$25). Every day in which a person engages in conduct prohibited by this regulation shall constitute a single and separate violation.

4. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the suspension of the tobacco sales permit granted pursuant to this regulation. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date 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 hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

K. Enforcement: As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in the manner provided in MGL chap. 40, sect. 21D, by the Commissioner or his/her designees. Any fines imposed under the provisions of this regulation shall enure to the Cambridge Public Health Commission.

L. 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 section being in force.

Implementation of this regulation will occur in March of 1999.

Secondhand Smoke: The Facts

Secondhand smoke, also known as environmental tobacco smoke, is a mixture of smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from a smoker's lungs.

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.

(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.

(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke are between 440-450% higher in bars that allow smoking than in residential settings.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.

(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.

(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

Data collected by The Five City Tobacco Control Collaborative, a project of the Health Departments of Cambridge, Chelsea, Everett, Revere, and Somerville.



Secondhand Smoke: A Witches' Brew of Toxic Chemicals

Secondhand Smoke: A Group A Carcinogen

The Environmental Protection Agency has classified secondhand smoke as a group A carcinogen: a substance known to cause cancer in humans for which there is no safe level of exposure.⁷ This puts secondhand smoke into the same class of toxic chemicals as these other group A carcinogens: arsenic, asbestos, benzene, radionuclides, and radon (Table 1).

Table 1. Partial List of Group A Carcinogens

Secondhand smoke
Arsenic
Asbestos
Benzene
Benzidine
Chloromethyl Methyl Ether
Chromium
Radionuclides
Radon
Vinyl Chloride

Chemicals and Carcinogens in Secondhand Smoke

Tobacco smoke contains more than 4,000 chemicals, of which at least 40 are established carcinogens.⁹ Secondhand smoke contains most of the same chemicals as the smoke that active smokers breathe; however, the concentration of the most toxic and carcinogenic chemicals is much higher in secondhand smoke.

Several of the carcinogens in secondhand smoke are listed in Table 2.

Table 2. Known Carcinogens in Secondhand Smoke

Benzene
Formaldehyde
Hydrazine
N-Nitrosodimethylamine
N-Nitrosopyrrolidine
o-Toluidine
2-Naphthylamine
4-Aminobiphenyl
Benz(a)anthracene
Benzo(a)pyrene
Quinoline
NNN
NNK
N-Nitrosodiethanolamine
Cadmium
Nickel
Polonium-210

Source: U.S. Department of Health and Human Services. *Reducing the Health Consequences of Smoking: 25 Years of Progress. A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Office on Smoking and Health, 1989.

To get an idea of how toxic secondhand smoke is, one need only consider some of the chemicals in tobacco smoke and their other uses (Table 3).

**Table 3. Chemicals in Secondhand Smoke
and Their Other Uses**

<i>Chemical</i>	<i>Use</i>
Acetone	Nail polish remover
Acetic acid	Vinegar
Acrolein	Industrial solvent
Arsenic	Poison
Butane	Cigarette lighter fluid
Cadmium	Rechargeable batteries
Carbon monoxide	Colorless, odorless, poison gas
DDT	Insecticides
Formaldehyde	Preserver of body tissue
Hexamine	Barbecue lighter
Hydrogen cyanide	Gas chamber poison
Methane	Swamp gas
Methanol	Rocket fuel
Naphthalene	Mothballs
Nicotine	Insecticide
Nitrobenzene	Gasoline additive
Nitrous oxide phenols	Disinfectant
Polycyclic aromatic hydrocarbons	Diesel fumes
Toluene	Industrial solvent

Source: Glantz SA. *Tobacco, Biology & Politics*. San Francisco, CA: Health Edco, 1992.

Secondhand Smoke: The Leading Source of Toxic Chemical Exposure

For most people, secondhand smoke is the leading source of toxic chemical exposure. The number of cancer deaths alone caused by secondhand smoke is higher than the total number of cancer deaths from all of the following environmental pollutants combined (Figure 4)^{10,11}.

- all outdoor air pollutants (radionuclides, asbestos, arsenic, benzene, coke oven emissions, and vinyl chloride)

- radiation
- pesticides on food
- active hazardous waste sites
- inactive hazardous waste sites
- chemicals in drinking water
- all workplace chemicals
- all consumer products (including asbestos)
- pesticide application
- contaminated sludge
- mining wastes

Thus, secondhand smoke is the number one environmental cause of cancer.

Conclusions

- **Secondhand smoke is a group A carcinogen. There is no safe level of exposure to secondhand smoke.**
- **For most people, secondhand smoke is the leading source of toxic chemical exposure.**
- **Secondhand smoke is the number one environmental cause of cancer, causing more deaths than the combined effects of radionuclides, asbestos, arsenic, benzene, coke oven emissions, vinyl chloride, radiation, pesticides, all hazardous waste, chemicals in drinking water, all workplace chemicals, all consumer products, contaminated sludge, and mining wastes.**

Restaurants where food is incidental

exception 12

10/5/98

B

Establishment	Street name	Street number	City	food incidental	variance possible
Guido's	Belmont St.	13-15	Cambridge	Yes	No
Bow and Arrow Pu	Bow St.	1	Cambridge	Yes	No
T.T. The Bear's Pl	Brookline St.	10-18	Cambridge	Yes	Yes
Campus/Manray	Brookline Street	21	Cambridge	Yes	Yes
Courtside	Cambridge St.	291	Cambridge	Yes	No
Pugliese Restoran	Cambridge St.	635	Cambridge	Yes	No
Sunset Grille	Cambridge St.	851	Cambridge	Yes	No
Eddy's Place	Cambridge Street	877	Cambridge	Yes	No
The Hideaway	Concord Lane	20	Cambridge	Yes	Yes
Ryles	Hampshire St.	212	Cambridge	Yes	Yes
Paradise Cafe Inc	Mass Ave	180	Cambridge	Yes	Yes
Cambridgeport Sal	Mass Ave	297	Cambridge	Yes	No
Cantab Lounge an	Mass Ave.	728	Cambridge	Yes	No
The Plough and Th	Mass Ave.	912	Cambridge	Yes	No
Paddy's Lunch Inc	Walden st	260	Cambridge	Yes	No
Joey Mac's	Warren St.	23	Cambridge	Yes	No
The Western Front	Western Ave	343	Cambridge	Yes	No

dca

B



Secondhand Smoke: The Facts

Secondhand smoke, also known as environmental tobacco smoke, is a mixture of smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from a smoker's lungs.

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.

(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.

(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.

(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.

(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke are between 440-450% higher in bars that allow smoking than in residential settings.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.

(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.

(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.

(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

Data collected by The Five City Tobacco Control Collaborative, a project of the Health Departments of Cambridge, Chelsea, Everett, Revere, and Somerville.

Support for Smoke-Free Restaurants in Massachusetts

- Athol: Random phone survey of 240 residents. 88% said they would still go to their favorite restaurant if they were required to be smoke free. (2/97)
- Brookline: After Brookline's Smoking Ban in restaurants, a study noted that there was no significant impact on the number of people who ate in Brookline's restaurants. (Boston University School of Public Health, 1995)
- Fitchberg: Random phone survey of 201 residents. 85% would still eat out if all restaurants in Fitchberg were smoke free. (8/95 and 9/95)
- Gardner: Random phone survey of 200 residents. 90% would still eat out in Gardner if restaurants were smoke free. (8/95)
- Leominster: Random phone survey of 204 residents. 87% would still eat out in Leominster if restaurants were smoke free. (6/95 and 7/95)

Support for Smoke-Free Public Places in Massachusetts

- Chelsea: Random street survey of 877 individuals. 91% said they believed that second hand smoke is harmful to others. (1/98)
- Orleans: 3,335 voters surveyed outside polling stations on Election Day. 74% supported smoke free regulations for public places (including restaurants) and in the work place. (9/96)
- Worcester: 500 residents responded to a mail survey. 87% said they believed that second hand smoke may cause health problems and 79% said they would support ordinances regulating smoking in public places (including restaurants). (10/96)
- Worcester: Of 21,479 votes cast, 70.8% voted in favor of the non-binding referendum which supports the adoption of a city ordinance that would prohibit smoking in all buildings open to the public. (City Ballot, 11/97)

National Support for Smoke-Free Restaurants

- A study conducted in 15 cities with smoke free ordinances throughout the country found that the ordinances did not lower overall restaurant sales. (American Journal of Public Health, 7/94)
- An Arizona study found that in a city where smoking was banned in restaurants, 4 times as many people supported the ordinance as compared to those who opposed it. (Journal of Community Health, 4/96)
- A study of 763 residents of New York found that 87% of the people surveyed would eat out as often or more often if the restaurants were smoke free. (Gallup Public Opinion Survey, 10/94)

*Unless noted, city health departments conducted all surveys.
Surveys reviewed and compiled by Julie Herbstman, intern with 5 City Tobacco Control Collaborative.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 98-2955-AMASSACHUSETTS RESTAURANT ASSOCIATION, INC.
Plaintiff

VS.

BOSTON PUBLIC HEALTH COMMISSION

and

DAVID MULLIGAN, COMMISSIONER
DefendantsRULING UPON PLAINTIFF'S APPLICATION
FOR PRELIMINARY INJUNCTIVE RELIEF

RULING

Upon careful consideration of the pleadings, of the substantial factual materials submitted by all parties (including affidavits, affidavit exhibits, and deposition transcripts), of their memoranda of law, and of the oral arguments at hearing, the court DENIES the application of the plaintiff Massachusetts Restaurant Association, Inc. for preliminary injunctive relief against the operation of the Regulation for Restaurant Smoking Restrictions adopted by the defendant Boston Public Health Commission on March 19, 1998, and scheduled for effect as of September 30, 1998.

GROUNDS

The court has assessed the plaintiff Restaurant Association's request for a preliminary injunction under the settled standards of the leading precedent. Packaging Industry Group, Inc. v. Cheney, 380 Mass 609, 616-622 (1980). To merit the preliminary injunction the applicant should show (1) a likelihood of success upon the ultimate merits of its claim; (2) actionable irreparable harm in the absence of the injunctive protection; (3) a favorable or overriding balance of actionable harm against harm claimed by the defendant as the result of the imposition of the injunction; and (4) the weight of any public interest affected by the allowance or denial of the injunction.

1. Likelihood of success on the ultimate merits. The Restaurant Association has not established a probability of success upon its legal theories (a) that the Regulation fails to constitute a "reasonable" health measure as required by its enabling statute, M.G.L. c. 111, § 31, because its several qualifications and exceptions defeat its main purpose to protect the public, and especially the elderly, the young, and infirm, from the dangers of environmental tobacco smoke in restaurants; (b) that the Commission improperly granted certain qualifications and exceptions to the smoking restrictions as accommodations of the economic losses resulting to restaurants from the public health measure; and (c) that the Regulation was impermissibly vague in its definitions and distinctions of regulated "restaurants" and less regulated "bars," "bar areas", and "private function rooms."

After examination of all the precedents cited by both sides upon each of these theories, I conclude that the Restaurant Association is not likely to prevail upon any of them or their similar formulations as constitutional due process and equal protection claims in the Complaint. The plaintiff has not cited, and I have not found by independent search, any Massachusetts precedent

supporting any of these rationales. The several cases cited from other jurisdictions are distinguishable by their facts and by the absence of a public health police power doctrine as expansive as that of Massachusetts. The great preponderance of Massachusetts decisional law and of analogous United States Supreme Court precedents (much of it collected in the Commission's memorandum of law) upholds the validity of statutes and regulations of the kind challenged here.

In short, the qualifications permitted by the Boston Regulation do not render the restaurant smoking restrictions ineffectual so as to defeat its purpose and to reduce it to an unreasonable public health measure (one curtailing the business of restaurants for no valid public health gain). The distinctions between thoroughly regulated "restaurants" and less regulated "bars," "bar areas," and "private function rooms" are understandable and workable, and not vague. And the Commission is not prohibited from accommodating or cushioning the adverse economic consequences of the smoking restrictions upon restaurant (if it chose to do so) by limiting, rather than abolishing, smoking activity in bar areas and private function rooms.

2. Irreparable harm to the restaurants. The Restaurant Association's prediction of irreparable harm by reason of immeasurable loss of revenue and good will is somewhat speculative. More importantly, the irreparable harm alleged must result from apparently actionable or unlawful action by the governmental defendant. Packing Industries Group, Inc. v. Cheney 380 Mass. at 617 ("what matters ... is not the raw amount of irreparable harm... but rather the risk of such harm in light of the party's chance of success on the merits.") The Restaurant Association has not shown irreparable harm together with favorable prospects on the merits. The two must coincide.

3. Counterveiling irreparable harm; 4. the public interest. In an injunctive action against a governmental agency pursuing a health or welfare objective, these two criteria merge into the same consideration: what consequence does an injunction impose upon the public health purpose (viewed again in light of the probable legal merits)? Here the Regulation is more probably valid than not. Further, the postponement of its operation for a year or so by a preliminary injunction would expose the public and especially its susceptible groups (as mentioned in the Regulation preamble, the elderly, the young, and the ill) and restaurant employees to environmental smoke dangers in restaurants for that interval. That potential harm seems serious and overriding. In light of the rationally suspected role of such smoke as a cause or as an exacerbation of cancer, cardiovascular disease, respiratory illness, ear-nose-and-throat problems, allergies, and eye irritations, we could not measure the casualty rate of an injunctive delay in the implementation of the Regulation and, of course, could not repair the harm to anyone suffering the cause or the aggravation of serious resulting illness during that period. In short, the balance of danger and of the public interest weighs against interference with the Regulation as the litigation goes forward.

[signed] Mitchell J. Sikora, Jr.
Justice of the Superior Court

Dated: September 25, 1998.



City of Cambridge

COMMITTEE REPORT #2

IN CITY COUNCIL

November 9, 1998

COUNCILLOR TRIANTAFILLOU

ORDERED: That the City Manager be requested to direct that the following information be prepared and staff be present at the next meeting of the Health and Hospital Committee:

1. Legal opinion on the jurisdiction issues.
2. Attorney from the City Solicitors Office present.
3. License Commission staff present.
4. Scientific information on second hand smoke.
5. Copies of regulations from surrounding committees in the chart provided at the hearing.
6. Data about how the current ordinance is working.
7. Information as to whether the second hand smoke can be measured and monitored with regulations based on this.
8. Red line copy of proposed regulations that shows changes in various ordinance drafts.

In City Council November 9, 1998.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

D. Margaret Drury

ATTEST:-

D. Margaret Drury
City Clerk



City of Cambridge

COMMITTEE REPORT #2

IN CITY COUNCIL

November 9, 1998

COUNCILLOR TRIANTAFILLOU

ORDERED: That the City Manager be requested to direct that the following information be prepared and staff be present at the next meeting of the Health and Hospital Committee:

1. Legal opinion on the jurisdiction issues.
2. Attorney from the City Solicitors Office present.
3. License Commission staff present.
4. Scientific information on second hand smoke.
5. Copies of regulations from surrounding committees in the chart provided at the hearing.
6. Data about how the current ordinance is working.
7. Information as to whether the second hand smoke can be measured and monitored with regulations based on this.
8. Red line copy of proposed regulations that shows changes in various ordinance drafts.

In City Council November 9, 1998.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

A handwritten signature in cursive script that reads "D. Margaret Drury".

ATTEST:-

D. Margaret Drury
City Clerk

Graham Keldor, Attorney, 81 Oxford Street, discussed legal issues connected with the proposed regulations. He emphasized that these are not primarily issues of private right; they are issues of public health. Restaurants are already heavily regulated to protect public health. Mr. Keldor then provided statistics regarding underage smoking. He then discussed Judge Osteen's July 1998 ruling which vacated Chapters 1-6 of the EPA's report on environmental hazards in which second hand smoke was classified as a known carcinogen. He noted that the ruling did not vacate the EPA's other findings about the many health hazards of second hand smoke. The ruling is now on appeal. He explained that this case was brought by tobacco companies. In Sayville vs. City of Suffolk, August 1998, a New York federal case, the judge stated that second hand smoke is a carcinogen.

Councillor Triantafillou asked about the legal case in which the new Boston regulations were upheld. Mr. Kelder submitted a copy of the legal decision (Attachment C) and stated that Mass. General Laws, Section 31 gives health departments the right to pass reasonable regulations to protect resident's health.

Councillor Russell asked then why does the City have an ordinance instead of just regulations promulgated by the Health Commission. Mr. Kelder stated that there is an argument that since the Health Commission's power to pass regulations comes from the state, such regulations would control if there were a conflict between the regulations and a city ordinance.

Mayor Francis Duehay stated that the Health Commission does indeed possess power to make regulations. He cited the issue of nerve gas in Cambridge, in which the former Commissioner of Public Health passed regulations banning the production of nerve gas in Cambridge. These actions could have been done by ordinance or health commission regulations.

Councillor Reeves stated that it is difficult to decipher the delegation of public health responsibility in Cambridge.

Mr. O'Brien stated that the 1996 enabling legislation of the Public Health Commission clearly vests all of the public health authority in the Chief Executive Officer of the Public Health Commission.

Councillor Reeves stated that this is troubling because Mr. O'Brien is also responsible for health issues in Somerville. Councillor Reeves stated that the designation of particular places as places that are primarily bars is not rational. He gave the example of the Plough and Stars at lunch time, when food is certainly not incidental, and the bar at the Marriot with the horrible sports pictures, where, under the new regulations, smoking would be banned even though food is most certainly incidental. The proposal is unfair; it pits establishments against each other and treats some similarly situated establishments differently.

Mayor Duehay stated that he has to leave for another meeting, but he strongly supports the prohibition of smoking.

Mr. Cox then responded to Councillor Reeves. Mr. Cox stated that there is Public Health Commission staff specifically dedicated to Cambridge health issues. He then explained that the Public Health Commission's preference would be for a city that is 100% smoke free.

Mr. O'Brien stated that the Public Health Commission agrees that it is complicated to define "restaurants where food is incidental."

Councillor Sullivan asked whether the Public Health Commission is preparing an ordinance. Mr. O'Brien stated that the preference is for repeal of the ordinance and promulgation of regulations by the Public Health Commission.

Vice Mayor Galluccio asked whether the Public Health Commission believes its authority supercedes that of the City Council

Mr. O'Brien stated that the Public Health Commission wants to work with the City Council, and is not attempting to assert authority in opposition to the City Council. It is important to work together.

Mr. O'Brien then introduced Mitch Lewis, a high school student, 27 Linnaean Street. Mr. Lewis stated that he represents Shortstop, which deals with teen issues, including tobacco. Shortstop fully supports this proposal. He stated that his friends who smoke know all of the facts about how dangerous it is. He urged an increased effort to getting the information out to youth with a sharper tone. The problem of complacency still lingers.

Lynn Shoeff, Public Health Department, focused on the impact on children and teens. She provided statistics on youth smoking. Since 1996, the percent of CRLS students who have smoked tobacco on the last 30 days has increased from 16 to 25%. Eighteen percent of middle school students acquired cigarettes from stores or vending machines. The Commission is recommending strengthening the laws to conform to surrounding communities.

Eileen Sullivan, Director, Five-City Tobacco Collaborative, then provided information comparing Cambridge's present ordinance with the regulations of surrounding communities. The Cambridge restaurant provisions are not as strong as those in other communities. Boston has a public health regulation providing for smoke-free restaurants. Somerville is phasing in smoke free restaurants by 2002. Brookline is 100% smoke free by town by law.

Councillor Reeves asked about waive provisions in Somerville. Ms. Sullivan stated that the Somerville provision is quite close to the Boston provision. By the year 2000 all restaurants will be smoke free, and restaurants with bar areas can apply to the Public Health Commission for a variance. There are physical criteria for receiving the variance.

Councillor Reeves asked about outside areas in restaurants. Ms. Sullivan stated that outside locations would be allowed to have smoking outside.

Councillor Born stated that she is generally supportive of getting Cambridge in line with Boston and Somerville. She noted her concern that the regulation may tip certain establishments toward serving less food, which will mean that patrons drink more and become more inebriated which is not good for public health either.

Ms. Sullivan stated that the License Commission granted these exceptions in 1976 with the understanding that no other establishments will be granted this status. If the establishments on this list change hands, they will be required to serve food.

Councillor Sullivan asked why no groups have sued Cambridge restaurants or the state for violation of the ADA. Ms. Sullivan stated that the ADA requires a private plaintiff.

Councillor Sullivan asked whether the other cities that have public health regulation of smoking have public health commissioners not hired by the Mayor or City Manager. Mr. O'Brien stated that he believes the commissioners are hired by the Mayor or Manager in other cities. Councillor Sullivan pointed out that Cambridge is different and Councillor Sullivan requested a red-lined copy of the proposed regulations that shows the changes in the various drafts.

Councillor Reeves stated that he would like to see the problem of public drinking addressed.

Councillor Triantafillou then invited public testimony. John Clifford, 55 Aberdeen Avenue, owner of Green Street Grill, spoke in opposition to rescinding the current ordinance and establishing the proposed regulations in place of an ordinance. The ordinance works. Most restaurants in Cambridge are smoke free. There is no formal definition of bars and nightclubs. There are many restaurants that become bars in the late hours.

William Jones, 55 Essex Street, spoke in opposition to the proposal. The restaurants in Boston are going broke.

Rick DiFilippi, 189 Upland Road, Chair of the Board of Trustees of the Cambridge Health Alliance, spoke in support of the proposal. This city should be smoke-free. This is a reasonable proposal.

Ed Sweda, 172 Boston Street, Senior Attorney with the Tobacco Control Resource Center, stated that there are three court decisions in Massachusetts upholding Boston, Brookline and North Hampton public health regulations limiting and/or banning smoking.

Andy Cook, Brighton, stated that he does business at 33 Dunster Street, John Harvard's Brew House and spoke in opposition to the proposal. Perhaps some action should be taken but there must be careful consideration. Presently 80% of the seating at his restaurant is nonsmoking anyway.

Steven Peljovich, Needham, stated that he works at 33 Dunster Street. He used to work in Bethesda, Maryland, with the town border right across the street. When a no smoking law was passed in one jurisdiction, the patrons went to the other jurisdiction. He urged keeping the present ordinance.

Steve Helfer, 3 Crawford Street, spoke in opposition to the proposal and in favor of keeping the ordinance as it currently exists.

Michael Merconi, 17A Forest Street, spoke in opposition to the proposal. It is not necessary.

Kristy Hogan, Director of Government and Community Relations for the Cambridge Chamber of Commerce, stated that the Chamber has many members on both sides of the proposed smoking ban. However the Chamber urges that it remain an ordinance under the control of the City Council.

Joseph Seder, 171 Auburn Street, owner of the Middle East, stated that 2/3 of his customers after 10 p.m. smoke. He spoke in opposition to the proposal.

Harry Katis, owner of the Fishery, spoke in opposition to the new proposal. It will create a lot of problems. The present system works.

Elizabeth Van Ranst, Foster Street, Tobacco Education Specialist, Brookline Health Department, provided information on the Brookline situation. If Cambridge does not become smoke-free, any variances should be time-limited. She also urged that no exception be made for outside eating areas, because otherwise the "fresh air" area becomes filled with smoke.

Jamie Tupper, owner of Cambridge Sail Loft, President of Cambridge License Advisory Board, stated that the proposal is not needed. The current law works. The market is forcing non-smoking. In addition, enforcement of the proposed regulation would be very difficult. Tobacco is a legal substance.

Dr. Melvin Chalfin, 31 Bates Street, former Commissioner of Health and Hospitals, spoke in support of Cambridge moving forward to change behavior and attitudes so that people no longer die of smoke-related diseases.

Steven Puglese, stated that his family has owned Guido's Café in Cambridge since 1942 and spoke in opposition to the proposal. He stated that approximately 75% of his customers smoke. The proposal will hurt businesses like his.

Bruce Boden, 34 Thaddeus Mann Road, Northborough, Massachusetts Restaurant Association, urged continued discussion and revisions to address the concerns of restaurant owners. From 50% to 100% smoke free is a huge step. A lot of Cambridge restaurants are already at much greater than 50% smoke free, especially in the restaurant area. In the bar area, it is closer to 50%. He also noted the importance of the issue of authority. The City Charter may require that the City Council control the Health Commission. He stated that many restaurants across the state lost money after smoking bans were enacted.

Councillor Triantafillou then invited the City Council to ask additional questions about the proposal.

Vice Mayor Galluccio expressed his concern about the economic effects on Cambridge businesses. He noted that this proposal would make Cambridge somewhat out of step with surrounding communities. He also urged consideration of providing some relief to restaurants with bar areas, if the bar areas can be isolated from the restaurants. Vice Mayor Galluccio asked whether patrons sitting in nonsmoking areas of restaurants are faced with an unsafe level of smoke.

Mr. O'Brien answered in the affirmative. He stated that some of the concessions made in the ordinance put restaurant and bar workers and patrons at risk.

Ms. Sullivan stated that restaurant and bar workers have higher incidents of certain smoke-related diseases.

Vice Mayor Galluccio requested that he be provided with information about the number of restaurants that are smoke free in Cambridge.

Ms. Sullivan said 100 out of 400 total restaurants are smoke free.

Vice Mayor Galluccio stated his concern with intrusion or personal rights. He said that he is also very concerned about the rights of restaurant and bar workers. He urged continued discussions with restaurant and bar owners.

Councillor Russell asked what would happen if the City Council does not rescind its ordinance. Mr. O'Brien stated that the Public Health Commission is following the direction of this committee and the City Council on this matter. Councillor Russell stated that she would like to see information about the jurisdiction issues.

Councillor Sullivan asked for a brief description of what changes had been made since the first draft of the proposed regulation up to the current 12th draft. Mr. Cox described a process of revamping as a result of many discussions with citizens, restaurant owners, etc. They started from a point of all establishments being smoke free.

Councillor Sullivan asked why the exemption for prisons and places of detention was eliminated. In the previous draft, it was left up to the sheriff. Ms. Sullivan stated that there was no intent to increase regulation. Mr. O'Brien stated that they would insure that the original intent is restored.

Councillor Reeves stated that it is an abdication of responsibility to rescind an ordinance to replace it with regulations made by a non-elective body. He is also concerned about the jurisdiction issue. Councillor Reeves stated that he would like to have the License Commission present at the next hearing. He then observed that everyone who has presented testimony is either connected to a restaurant or public health. He would like to know what the general public thinks and what people of color think about this issue. He wants a better dialogue between the business community and the public health community and he would also like to see more scientific evidence on the effects of public health.

Councillor Russell stated that her father smoked heavily, and her mother, who did not smoke, died of emphysema. She asked about bowling alleys and bingo. Mr. Cox stated that they are proposing that bowling alleys they be smoke free.

Councillor Sullivan asked about fraternal organizations and bingo. Mr. Cox stated that restaurant owners requested that private clubs not be excepted.

Councillor Sullivan stated that if they are proposing eliminating previous exceptions those people should be notified.

Councillor Triantafillou moved that the City Manager be requested to direct that the following information be prepared and staff be present at the next meeting of the Committee on this topic:

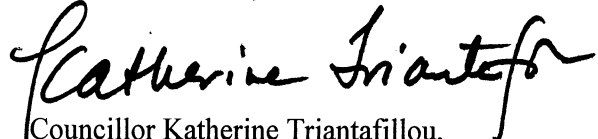
1. Legal opinion on the jurisdiction issues.
2. Attorney from the City Solicitors Office present.
3. License Commission staff present.
4. Scientific information on second hand smoke.
5. Copies of regulations from surrounding committees in the chart provided at the hearing
6. Data about how the current ordinance is working.
7. Information as to whether the second hand smoke can be measured and monitored with regulations based on this.
8. Red-lined copy of proposed regulation illustrating changes from previous drafts.

The motion passed without objection on a voice vote.

Councillor Triantafillou thanked all those present for their attendance.

The meeting adjourned at 8:52 p.m.

For the Committee,


Councillor Katherine Triantafillou,
Chair

City of Cambridge

The Health and Hospital Committee held a public meeting on October 13, 1998 beginning at 5:34 p.m. in the Sullivan Chamber for the purpose of discussing the Public Health Commission's proposed regulations regarding smoking.

Present at the hearing were Councillor Katherine Triantafillou, Chair of the Committee, Mayor Francis H. Duehay, Vice Mayor Anthony D. Galluccio, Councillor Henrietta Davis, Councillor Kenneth E. Reeves, Councillor Sheila T. Russell, Councillor Michael A. Sullivan, Councillor Katherine Triantafillou, and City Clerk D. Margaret Drury. Also present were John O'Brien, Chief Executive Officer of the Public Health Commission; Harold Cox, Chief Public Health Officer; Arthur Goldberg, Attorney, City Solicitor's office.

Councillor Triantafillou convened the hearing and explained the purpose. She invited John O'Brien to introduce the presentation.

Mr. O'Brien stated that the Public Health Commission is here to propose changes in the regulation of smoking in Cambridge. Mr. O'Brien said that the Public Health Commission is presenting information to the City Council and the public about the health hazards of second-hand, or environmental, tobacco smoke. (Attachment A) Mr. O'Brien then provided an overview of the presentations for the evening. Thereafter he introduced Harold Cox, Chief Public Health Officer.

Mr. Cox stated that Cambridge has an ordinance that is quite comprehensive. However, in view of current knowledge of the danger of second-hand smoke, it is important to go one step further. Mr. Cox stated that the Public Health Commission is proposing no smoking in restaurants and in the bar sections of restaurants. In bars which fall in the category of establishments licensed in 1976 by the License Commission with permission to take in a certain larger percentage of revenue from liquor than from food, smoking would be allowed. In 1976, 17 establishments met the criteria to be considered a bar. The list of these establishments is attached. (Attachment B) In nightclubs, the proposal is to permit smoking if the nightclub has a certain occupancy with the number yet to be defined.

The committee then heard from Mark Gottlieb, resident of Clay Street, Attorney the Tobacco Control Resource Center. He discussed the relationship of the Americans with Disabilities Act (ADA) to second hand smoke. His organization's analysis is that severe asthma and angina may well qualify as disabilities under the Act. If the disabilities do qualify, then public facilities are required to make a reasonable modification of policies and procedures to allow access to the person with disabilities unless such a change would fundamentally alter the nature of the business.

Councillor Triantafillou asked whether he was arguing that not providing smoke-free restaurants could violate the ADA. Mr. Gottlieb said that several cases to that effect are making their way through the courts.

Councillor Triantafillou asked Mr. Gottlieb to provide the citations for these cases.

Committee Report #2

572P

A communication was received from Councillor Triantafillou, for a meeting held on October 13, 1998 for the purpose of discussing the Public Commission's proposed regulations regarding smoking.

In City Council November 9, 1998

*Report accepted &
placed in file
Order adopted*