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CAMBRIDGE MA.

**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139  
Tel. (617) 349-4121  
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*Russell B. Higley*  
City Solicitor

*Donald A. Drisdell*  
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*Michael C. Costello*  
Assistant City Solicitor

Legal Counsel

*Birge Albright*  
*Gail S. Gabriel*  
*Arthur J. Goldberg*  
*Linda A. Stamper*  
*Deborah R. Cautela*  
*Nancy E. Glowa*

**INTEROFFICE MEMORANDUM**

**DATE:** May 24, 1995

**TO:** Margaret Drury  
**FROM:** Birge Albright BA  
**RE:** Smoking Ordinance

Your office has supplied me with a draft of the new Chapter 8.28 of the Code (Restrictions on Youth Access to Tobacco Products and on Smoking in Work Places and Public Places), which was passed to a second reading on Monday, May 22 by the City Council.

After reviewing this draft, I suggest that the last sentence of § 8.28.030 (5) (Self-service displays) be deleted. This sentence is not necessary, because § 8.28.080 makes it clear how § 8.28.030 is to be enforced.

w/9



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3

✓✓✓

# City of Cambridge

MASSACHUSETTS

In City Council 6-5 1995

*Unj. On Ordination*

*Bus  
#18*

YEA	NAY	ABSENT	PRESENT	
	✓			Ms. Kathleen L. Born
	✓			Mr. Francis H. Duehay
✓				Mr. Anthony Galluccio
✓				Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
✓				Mr. Michael A. Sullivan
✓				Mr. Timothy J. Toomey, Jr.
	✓			Ms. Katherine Triantafillou
✓				Mayor Kenneth E. Reeves

*6 3 0 0*

# City of Cambridge

*Wagon Bus #18*

MASSACHUSETTS

In City Council 6-5 1995

*C. B. Amend re restaurants*

	YEA	NAY	ABSENT	PRESENT
Ms. Kathleen L. Born	✓			
Mr. Francis H. Duehay	✓			
Mr. Anthony Galluccio		✓		
Mr. Jonathan S. Myers	✓			
Mrs. Sheila T. Russell		✓		
Mr. Michael A. Sullivan		✓		
Mr. Timothy J. Toomey, Jr.		✓		
Ms. Katherine Triantafillou	✓			
Mayor Kenneth E. Reeves		✓		

*4 5 0 0*

# City of Cambridge

MASSACHUSETTS

In City Council 6-5 1995

*C. Born: Replace 8'28'030 seat 5*

		<i>Sea Service Display</i>		
		<i>8-28-080 seat 5</i>		
YEA	NAY	ABSENT	PRESENT	
				Ms. Kathleen L. Born
✓				Mr. Francis H. Duehay
✓				Mr. Anthony Galluccio
	✓			Mr. Jonathan S. Myers
✓				Mrs. Sheila T. Russell
	✓			Mr. Michael A. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
✓				Ms. Katherine Triantafillou
<del>WMM</del>	✓			Mayor Kenneth E. Reeves

4                      5                      0                      0

*Councilman Bowen*

**Proposed amendments to the Smoking Prevention Ordinance**

To replace section 8.28.030 (section 5):

Self-service Displays

All tobacco products must be kept on, above, or behind the main staffed counter(s) and within 10 feet of the cashier but not extending from the counter, unless in a locked case.

To add to section 8.28.080 (section B.1):

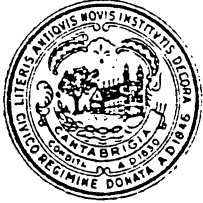
Enforcement and Penalties

The privilege to keep products on the counter can be removed by the Commissioner of Inspectional Services if tobacco sales permit holder is found to have sold tobacco products to a minor.

To replace section 8.28.060

Restrictions on Smoking in Restaurants, Bars and Lounges

Smoking shall be prohibited in Cambridge establishments licensed as restaurants. This section shall not apply to establishments licensed as a bar, lounge or club.



# City of Cambridge

---

In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to the "Municipal Code of the City of Cambridge."

*Be it ordained by the City Council of the City of Cambridge as follows:*

That Chapter 8.28 of the Municipal Code of the City of Cambridge entitled "Smoking" be and hereby is repealed and replaced by a new Chapter 8.28 entitled: "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places."

ATTEST:- D. Margaret Drury  
City Clerk

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- D. Margaret Drury  
City Clerk



# City of Cambridge

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In the Year One Thousand, Nine Hundred Ninety-Five

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In amendment to the "Municipal Code of the City of Cambridge."

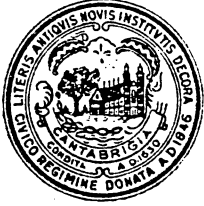
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City Clerk



# City of Cambridge

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In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to an ordinance entitled the "Cambridge Municipal Code"

*Be it ordained by the City Council of the City of Cambridge as follows:*

WHEREAS, evidence demonstrates that tobacco is extremely addictive; and

WHEREAS, 18 is the legal age to purchase cigarettes in the Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of Cambridge residents voted in favor of Question One to raise the state excise tax on cigarettes and create a Health Protection Fund to advance the goals of tobacco control; and

WHEREAS, 90% of all smokers begin smoking as teenagers; and

WHEREAS, compliance checks in Cambridge have to date demonstrated that minors were able to purchase cigarettes in ten of eleven stores visited; and

WHEREAS, the Surgeon General of the United States found in her 1994 Report that community-wide efforts including enforcement of minors access laws are effective at reducing adolescent use of tobacco; and

WHEREAS, this data indicates that there is a significant health obligation to the children of Cambridge to reduce their easy and

obligation to the children of Cambridge to reduce their easy and illegal access to tobacco; and

WHEREAS, the US Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Class A known human carcinogen and major source of indoor air pollution putting all members of the population at increased health risk; and

WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act, which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a

ity.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Chapter 8.28," is hereby repealed and replaced by the following new Chapter 8.28:

CHAPTER 8.28

Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places

Declaration of Legislative Findings  
 Definitions  
 Access of Minors to Tobacco Products  
 Prohibition of Smoking in the Workplace  
 Restrictions on Smoking in Public Places  
 Restrictions on Smoking in Restaurants, Bars and Lounges  
 Implementation  
 Enforcement and Penalties  
 Severability

Declaration of Legislative Findings

City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare

preventing access to tobacco products by minors;  
 creating a permitting process for tobacco sales to  
 the enforcement of this Chapter;  
 prohibiting smoking in workplaces and most other public  
 and

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020            Definitions

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

Employee: any individual who performs services for an employer in return for wages or profit, or any individual who volunteers his or her services for a non-profit entity.

Employer: any person, including the City of Cambridge or any agency or department thereof, which regularly uses the services of two or more employees.

Enclosed area: a space bounded by walls and under a roof.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa,

boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

License Commission: the Cambridge License Commission, as established by St. 1922, c. 95.

Lounge or Bar Area: an area of a restaurant where the primary focus of the business is the service of alcoholic beverages rather than food, although full food service may be available in this area. The type of seating, barriers separating this area from the primary dining areas, and the arrangement of serving stations can help to further determine if this is to be considered a lounge or bar area.

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

Minor: any person under eighteen (18) years of age.

Non-smoking Area: all areas within a public place where smoking is prohibited.

Occupancy Number: the number of persons who may occupy a restaurant, as determined by the License Commission. The number, in certain cases, may include both standing and seated patrons.

Person: shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

Private Club: a place to which the general public is not invited and which requires membership or affiliation as a condition of

admittance. A Private Club is not a Public Place, but may be used as a public place, subject to the requirements of this Chapter, for special events open to the general public.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Restaurant: a space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualer under the provisions of G.L. c. 140. In addition, the person could hold a beer and wine or all alcohol pouring license. For the purposes of this Chapter the restaurant could be re-defined as a bar, lounge, or club after 4:00 or 10:00 p.m.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, or convenience store in which the

primary activity is the sale of food items to the public for off-premises consumption.

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

Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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

Workplace: any area within a structure or portion thereof at which one or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways, and entranceways.

8.28.030            Access of Minors to Tobacco Products

- (1) Tobacco Sales Permit Required. No person shall sell

tobacco products within the City of Cambridge without a tobacco sales permit issued by the Inspectional Services Department. As part of the application process, the applicant will be provided with the following:

- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and

- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at the each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the

age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free - standing, self service displays of tobacco products are required to be set up within clear eye view of a staffed store cash register and in no case more than ten (10) feet from at least one such register within the establishment. Enforcement of this Section will be dealt within the same manner as described as 8.28.080 of this ordinance.

#### 8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or

healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his/her designee in writing explaining why an exemption should be granted. The Commissioner or his/her designee will inform the employer of his/her decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of

this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050            Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever

passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;
- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.

- (i) The Middlesex County Jail/House of Corrections or places of incarceration/detention.
- (j) Religious ceremonies where smoking is part of the ritual.

8.28.060 Restrictions on Smoking in Restaurants,  
Bars and Lounges

Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking

areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Sections 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking area of the restaurant must be displayed near the entrance.

8.28.070 Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or his/her designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with

is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

8.28.080 Enforcement and Penalties

A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50 for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be

offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

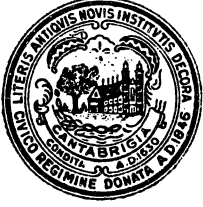
It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by

this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License Commission may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.



# City of Cambridge

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In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to an ordinance entitled the "Cambridge Municipal Code"

*Be it ordained by the City Council of the City of Cambridge as follows:*

WHEREAS, evidence demonstrates that tobacco is extremely addictive;  
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WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act, which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a

disability.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Smoking," is hereby repealed and replaced by the following new Chapter 8.28:

CHAPTER 8.28

Restrictions on Youth Access to  
Tobacco Products and on Smoking in  
Workplaces and Public Places

8.28.010 Declaration of Legislative Findings  
8.28.020 Definitions  
8.28.030 Access of Minors to Tobacco Products  
8.28.040 Prohibition of Smoking in the Workplace  
8.28.050 Restrictions on Smoking in Public Places  
8.28.060 Restrictions on Smoking in Restaurants, Bars and Lounges  
8.28.070 Implementation  
8.28.080 Enforcement and Penalties  
8.28.090 Severability

8.28.010 Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- a) preventing access to tobacco products by minors;
- b) creating a permitting process for tobacco sales to facilitate enforcement of this Chapter;
- c) prohibiting smoking in workplaces and most other public places; and

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020            Definitions

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

Employee: any individual who performs services for an employer in return for wages or profit, or any individual who volunteers his or her services for a non-profit entity.

Employer: any person, including the City of Cambridge or any agency or department thereof, which regularly uses the services of two or more employees.

Enclosed area: a space bounded by walls and under a roof.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa,

boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

License Commission: the Cambridge License Commission, as established by St. 1922, c. 95.

Lounge or Bar Area: an area of a restaurant where the primary focus of the business is the service of alcoholic beverages rather than food, although full food service may be available in this area. The type of seating, barriers separating this area from the primary dining areas, and the arrangement of serving stations can help to further determine if this is to be considered a lounge or bar area.

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

Minor: any person under eighteen (18) years of age.

Non-smoking Area: all areas within a public place where smoking is prohibited.

Occupancy Number: the number of persons who may occupy a restaurant, as determined by the License Commission. The number, in certain cases, may include both standing and seated patrons.

Person: shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

Private Club: a place to which the general public is not invited and which requires membership or affiliation as a condition of

admittance. A Private Club is not a Public Place, but may be used as a public place, subject to the requirements of this Chapter, for special events open to the general public.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Restaurant: a space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualer under the provisions of G.L. c. 140. In addition, the person could hold a beer and wine or all alcohol pouring license. For the purposes of this Chapter the restaurant could be re-defined as a bar, lounge, or club after 4:00 or 10:00 p.m.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, or convenience store in which the

primary activity is the sale of food items to the public for off-premises consumption.

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

Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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

Workplace: any area within a structure or portion thereof at which one or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways, and entranceways.

#### 8.28.030 Access of Minors to Tobacco Products

(1) Tobacco Sales Permit Required. No person shall sell

tobacco products within the City of Cambridge without a tobacco sales permit issued by the Inspectional Services Department. As part of the application process, the applicant will be provided with the following:

- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and

- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at the each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the

age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free - standing, self service displays of tobacco products are required to be set up within clear eye view of a staffed store cash register and in no case more than ten (10) feet from at least one such register within the establishment. Enforcement of this Section will be dealt within the same manner as described as 8.28.080 of this ordinance.

#### 8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or

healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his/her designee in writing explaining why an exemption should be granted. The Commissioner or his/her designee will inform the employer of his/her decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of

this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050            Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever

passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;
- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.

- (i) The Middlesex County Jail/House of Corrections or places of incarceration/detention.
- (j) Religious ceremonies where smoking is part of the ritual.

8.28.060            Restrictions on Smoking in Restaurants,  
Bars and Lounges

Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking

areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Sections 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking area of the restaurant must be displayed near the entrance.

#### 8.28.070 Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or his/her designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with

is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

#### 8.28.080 Enforcement and Penalties

##### A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50 for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

##### B. Suspension of Revocation of Permit or License

###### (1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be

offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by

this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License Commission may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

8.28.090 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

~~AMENDMENTS SUGGESTED BY VICE MAYOR RUSSELL, COUNCILLORS SULLIVAN AND GALLUCCIO, AND AMENDMENTS SUGGESTED BY THE CHAMBER OF COMMERCE~~

~~In an amendment to an ordinance entitled the "Cambridge Municipal Code"~~

~~An amendment to an ordinance entitled the "Cambridge Municipal Code"~~

WHEREAS, evidence demonstrates that tobacco is extremely addictive;  
and

WHEREAS, 18 is the legal age to purchase cigarettes in the Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of Cambridge residents voted in favor of Question One to raise the state excise tax on cigarettes and create a Health Protection Fund to advance the goals of tobacco control; and

WHEREAS, 90% of all smokers begin smoking as teenagers; and

WHEREAS, compliance checks in Cambridge have to date demonstrated that minors were able to purchase cigarettes in ten of eleven stores visited; and

WHEREAS, the Surgeon General of the United States found in her 1994 Report that community-wide efforts including enforcement of minors access laws are effective at reducing adolescent use of tobacco;

and

WHEREAS, this data indicates that there is a significant health obligation to the children of Cambridge to reduce their easy and illegal access to tobacco; and

WHEREAS, the US Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Class A known human carcinogen and major source of indoor air pollution putting all members of the population at increased health risk; and

WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act,

which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a disability.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Smoking," is hereby repealed and replaced by the following new Chapter 8.28:

CHAPTER 8.28

Restrictions on Youth Access to  
Tobacco Products and on Smoking in  
Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions
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8.28.010 Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- a) preventing access to tobacco products by minors;
- b) creating a permitting process for tobacco sales to facilitate enforcement of this Chapter;
- c) prohibiting smoking in workplaces and most other public places; and

d) ~~creating an atmosphere which promotes smoke free restaurants and strives towards the long term goal of smoke free dining throughout Cambridge.~~ *add*

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

#### 8.28.020 Definitions

Advisory Committee: a review committee established for this Chapter to mediate disputes over exemption requests that is composed of the Executive Secretary of the License Commission, ex officio, or ~~his~~/her designee, the Commissioner of Inspectional Services, ex officio, or ~~his~~/her designee, two common victualer license holders appointed by the City Manager from a list of 4 nominated by the Cambridge Liquor Advisory Board, and one Cambridge resident appointed by the City Manager from a list of 2 nominated by Cambridge United for Smoking Prevention (CUSP).]

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales. *add*

*delete*  
Cambridge Liquor Advisory Board: representatives of restaurants, private clubs and hotels who have liquor licenses that meet periodically with the License Commission and the Cambridge Substance Abuse Task Force to address the responsibilities of serving alcoholic beverages and related problems that can occur.

*delete*  
Cambridge United for Smoking Prevention (CUSP): a community-based program of the Cambridge Substance Abuse Task Force in coalition with the Department of Health and Hospitals, Department of Human Services, School Department, CASPAR, and individual community members.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

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engage in physical exercise, participate in athletic competition or witness sports events.

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Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

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- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at the each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco

in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. ~~All Upon free-standing, passage of this Ordinance, except pre-existing, all free-standing, self self-service service displaysdisplay~~ of tobacco products are prohibited. All cigarettes and chewing tobacco must be kept behind a counter at the cash register from which they are sold, or locked in a ~~display easescase~~.

*Handwritten note:*  
All existing free standing self service displays of tobacco products are required to be set up within clear eye view of all store cash registers and in no case more than 10 feet from at least one such register within the establishment.

~~All existing free standing self service displays of tobacco products are required to be set up within clear eye view of all store cash registers and in no case more than 10 feet from at least one such register within the establishment.~~

8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee

lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his/her designee in writing explaining why an exemption should be granted. The Commissioner or his/her designee will inform the employer of his/her decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy

or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050            Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions ~~Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.~~ ~~Any exceptions described herein may be~~ ~~revoked by the Commissioner for good cause.~~ ~~Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.~~ 28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;

- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.
- ~~(i) The Middlesex County Jail/House of Corrections or places of incarceration/detention.~~
- ~~(j) Religious ceremonies where smoking is part of the ritual.~~

8.28.060 Restrictions on Smoking in Restaurants,  
Bars and Lounges

1.

General Restrictions *Res Bar Lounge Club instead of*

~~A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons. (a) A restaurant with an occupancy number of twenty. Nor shall this section apply to any area in a smoke-free bar, (20) lounge or less club as defined eating in establishment. Any restaurant with a larger capacity must restrict smoking to an area comprised of no larger than 30% of its approved occupancy number beginning ninety (90) days after this Chapter's enactment date 28.-020 and Section G of this Chapter; bars lounges or clubs shall be exempted from any restrictions contained in Chapter 8.~~

~~28. (b) The permitted smoking area shall be reduced to 15% of the occupancy number in any establishment with a permitted smoking area one year after the 30% limit commenced.~~

~~B. (c) No Exemptions from the 30% and 15% requirements of this Chapter person shall be smoke granted in by any the restaurant Commissioner except or in his specifically designed if smoking the applicant meets the criteria and follows the procedures set forth below areas.~~

~~This prohibition does not apply in cases in which an entire room of hall is used for a private social function and not by the proprietor or person in charge of the restaurant. (d) The common victualer license holder (licensee) shall designate the smoking area, and if such area is approved by the Commissioner, shall be the person responsible for ensuring that all requirements contained in this Chapter are followed.~~

~~(e) Minors between 12 and 18 years of age will not be seated in a smoking area unless accompanied by a parent or guardian.~~

~~Parties with children under the age of 12 will not be seated in a smoking area. The good faith determination of the licensee or his designee will be used to enforce this requirement.~~

~~(f) Although no smoking restrictions will be imposed by this Chapter on the occupants of private function rooms, it shall be required that all these rooms have a sign warning of the health effects of second hand smoke posted in a clear and conspicuous manner. The owner or manager of the function room shall make a good faith effort to offer to set up for the renter of the room a non smoking/smoking division of the room if the renter so wishes.~~

~~2. Exemptions. An exemption from the smoking limitation shall be granted to a restaurant with a liquor license if the application for such an exemption is approved after meeting the requirements set forth below in this Chapter. Restaurants without liquor licenses or those with seating for dining only will not be permitted an exemption from the above smoking restrictions.~~

~~A. Application Procedure for an Exemption.~~

~~(1) A written request for an exemption to the Commissioner must be made setting forth the occupancy number approved by the License Commission and a statement of the category the licensee believes is appropriate for this licensed establishment, namely, a restaurant with a lounge or bar area or a restaurant that is a bar, lounge, or club or other category as further provided for in this Chapter. A floor plan(s) indicating the proposed smoking area(s) must also accompany the exemption request. The Commissioner or his designee may attach conditions to the exemption.~~

~~In exceptional circumstances, where a restaurant licensee does not fit any of the categories as defined and described in this Chapter, the Commissioner or his designee is empowered to make a determination as to what level of smoking should be permitted to fit the spirit of this Chapter.~~

~~(2) If the Commissioner or his designee does not believe the exemption request should be approved as submitted, the applicant will be contacted to discuss specific concerns so that approval may be obtained. If this informal method does not gain an approval, the Commissioner or his designee will issue a denial of the exemption request in writing setting forth his objections. The applicant will also be informed of the right to appeal this denial.~~

~~B. Lounge or Bar Area Exemption. A restaurant that has a dining room(s) and also has a lounge or bar area may request that this the lounge or bar area be fully exempted from smoking restrictions in the exemption request. If the lounge or bar area holds 30% or more of the overall occupancy number but less than 50% of this number, then no additional smoking area will be permitted in the dining room(s). If the lounge or bar area holds less than 30% of the overall occupancy number, then an additional designated smoking area can also be placed in the dining room to achieve the 30% maximum of this number. One year after the exemption is granted, the additional smoking area in the dining room must be eliminated. The entire lounge or bar area may remain as a smoking area.~~

~~C. Bar, Lounge, Smoking areas may be designated by the~~

proprietor or other person in charge of a restaurant except in places in which smoking is prohibited by the Fire Marshall or by other ~~or law~~ ~~club~~ ~~or~~ ~~Exemption~~ regulation. smoking ares designated so shall comprise no more than fifty percent of the seating capacity of the restaurant said computations shall not include seating capacity for any area defined as a bar, lounge or club where smoking ares are designated, existing physical barriers and ventilation system shall be used to minimize the toxic effect of smoke on persons in adjacent no smoking ares. In the case of restaurants consisting of a single room, the provisions of this section shall be considered met if one side of the room is reserved and posted as a non-smoking ares, provided that the no-smoking area comprises no less than fifty percent of the seating capacity of the restaurant, said computations shall not include seating capacity for any area defined as a bar, lounge or club.

D. However, to the extent that the shape of the room allows maximum separation, the proprietor will ~~be~~ be required to utilize those natural barriers to satisfy the provisions of this chapter. Furthermore, if such natural barriers do not exist, the proprietor will make every effort to set up the space to inhibit the transfer of smoke to nonsmoking ares.

E. Children under the age of 12 may not be seated in the smoking sections. Children from 12-18 may be seated in smoking sections if accompanied by parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free ares;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Sections 8.28.090 of this chapter, the Inspectional ~~Services~~ ~~Services~~ Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a ~~restaurant~~ restaurant to comply within provision of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area which smoking is or may hereafter be prohibited by law.

I. Provisions of this Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of ~~alcoholic~~ alcoholic beverages, or to restaurants converted to full bar establishments during certain hours. This provision will ~~also~~ apply to room in restaurants or private function halls being used for private functions to which the general public does not have access.

8.28.070 Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or ~~his/her~~ designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) in every area where smoking is prohibited or permitted by this Chapter.

c) Arranging seating so that physical barriers, ventilation systems, and available space are utilized to reduce the exposure to smoke of persons outside the area(s) where smoking is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in

areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

f) A sign indicating the number of non-smoking seats provided in the premises should be displayed on the entry way to the establishment.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

#### 8.28.080 Enforcement and Penalties

##### A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50 for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate

offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by

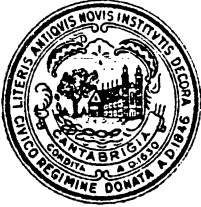
this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License Commission may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

8.28.090 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.



# City of Cambridge

Text with

In the Year One Thousand, Nine Hundred Ninety-Five

Amendments

## AN ORDINANCE

OF 5/22/95

In amendment to an ordinance entitled the "Cambridge Municipal Code"

*Be it ordained by the City Council of the City of Cambridge as follows:*

WHEREAS, evidence demonstrates that tobacco is extremely addictive;  
and

WHEREAS, 18 is the legal age to purchase cigarettes in the  
Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of  
Cambridge residents voted in favor of Question One to raise the  
state excise tax on cigarettes and create a Health Protection Fund  
to advance the goals of tobacco control; and

WHEREAS, 90% of all smokers begin smoking as teenagers; and

WHEREAS, compliance checks in Cambridge have to date demonstrated  
that minors were able to purchase cigarettes in ten of eleven  
stores visited; and

WHEREAS, the Surgeon General of the United States found in her 1994  
Report that community-wide efforts including enforcement of minors  
access laws are effective at reducing adolescent use of tobacco;  
and

WHEREAS, this data indicates that there is a significant health  
obligation to the children of Cambridge to reduce their easy and

obligation to the children of Cambridge to reduce their easy and illegal access to tobacco; and

WHEREAS, the US Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Class A known human carcinogen and major source of indoor air pollution putting all members of the population at increased health risk; and

WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act, which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a

ty.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Chapter 8.28," is hereby repealed and replaced by the following new Chapter 8.28:

CHAPTER 8.28

Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places

- Declaration of Legislative Findings
- Definitions
- Access of Minors to Tobacco Products
- Prohibition of Smoking in the Workplace
- Restrictions on Smoking in Public Places
- Restrictions on Smoking in Restaurants, Bars and Lounges
- Implementation
- Enforcement and Penalties
- Severability

Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare

- preventing access to tobacco products by minors;
  - creating a permitting process for tobacco sales to be enforced by the City;
  - prohibiting smoking in workplaces and most other public places;
- and

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020            Definitions

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

Employee: any individual who performs services for an employer in return for wages or profit, or any individual who volunteers his or her services for a non-profit entity.

Employer: any person, including the City of Cambridge or any agency or department thereof, which regularly uses the services of two or more employees.

Enclosed area: a space bounded by walls and under a roof.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa,

boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

License Commission: the Cambridge License Commission, as established by St. 1922, c. 95.

Lounge or Bar Area: an area of a restaurant where the primary focus of the business is the service of alcoholic beverages rather than food, although full food service may be available in this area. The type of seating, barriers separating this area from the primary dining areas, and the arrangement of serving stations can help to further determine if this is to be considered a lounge or bar area.

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

Minor: any person under eighteen (18) years of age.

Non-smoking Area: all areas within a public place where smoking is prohibited.

Occupancy Number: the number of persons who may occupy a restaurant, as determined by the License Commission. The number, in certain cases, may include both standing and seated patrons.

Person: shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

Private Club: a place to which the general public is not invited and which requires membership or affiliation as a condition of

admittance. A Private Club is not a Public Place, but may be used as a public place, subject to the requirements of this Chapter, for special events open to the general public.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Restaurant: a space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualer under the provisions of G.L. c. 140. In addition, the person could hold a beer and wine or all alcohol pouring license. For the purposes of this Chapter the restaurant could be re-defined as a bar, lounge, or club after 4:00 or 10:00 p.m.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, or convenience store in which the

primary activity is the sale of food items to the public for off-premises consumption.

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

Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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

Workplace: any area within a structure or portion thereof at which one or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways, and entranceways.

8.28.030            Access of Minors to Tobacco Products

- (1) Tobacco Sales Permit Required. No person shall sell

tobacco products within the City of Cambridge without a tobacco sales permit issued by the Inspectional Services Department. As part of the application process, the applicant will be provided with the following:

- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and

- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at the each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the

age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free - standing, self service displays of tobacco products are required to be set up within clear eye view of a staffed store cash register and in no case more than ten (10) feet from at least one such register within the establishment. Enforcement of this Section will be dealt within the same manner as described as 8.28.080 of this ordinance.

#### 8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or

healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his/her designee in writing explaining why an exemption should be granted. The Commissioner or his/her designee will inform the employer of his/her decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of

this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050            Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever

passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;
- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.

- (i) The Middlesex County Jail/House of Corrections or places of incarceration/detention.
- (j) Religious ceremonies where smoking is part of the ritual.

8.28.060 Restrictions on Smoking in Restaurants,  
Bars and Lounges

Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking

areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Sections 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking area of the restaurant must be displayed near the entrance.

#### 8.28.070 Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or his/her designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with

is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

#### 8.28.080 Enforcement and Penalties

##### A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50 for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

##### B. Suspension of Revocation of Permit or License

###### (1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be

offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

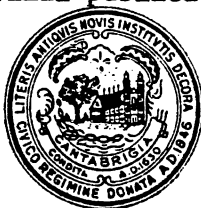
It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by

this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License Commission may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.



# City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to an ordinance entitled the "Cambridge Municipal Code".

*Be it ordained by the City Council of the City of Cambridge as follows:*

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, evidence demonstrates that tobacco is extremely addictive; and

WHEREAS, 18 is the legal age to purchase cigarettes in the Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of Cambridge residents voted in favor of Question One to raise the state excise tax on cigarettes and create a Health Protection Fund to advance the goals of tobacco control; and

WHEREAS, 90% of all smokers begin smoking as teenagers; and

WHEREAS, compliance checks in Cambridge have to date demonstrated that minors were able to purchase cigarettes in ten of eleven stores visited; and

WHEREAS, the Surgeon General of the United States found in her 1994 Report that community-wide efforts including enforcement of minors access laws are effective at reducing adolescent use of tobacco; and

WHEREAS, this data indicates that there is a significant health obligation to the children of Cambridge to reduce their easy and illegal access to tobacco; and

WHEREAS, the US Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Class A known human carcinogen and major source of indoor air pollution putting all members of the population at increased health risk; and

WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act, which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a disability.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Smoking," is hereby repealed and replaced by the following new

Chapter 8.28:

Restrictions on Youth Access to  
Tobacco Products and on Smoking in  
Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions
- 8.28.030 Access of Minors to Tobacco Products
- 8.28.040 Prohibition of Smoking in the Workplace
- 8.28.050 Restrictions on Smoking in Public Places
- 8.28.060 Restrictions on Smoking in Restaurants, Bars and Lounges
- 8.28.070 Implementation
- 8.28.080 Enforcement and Penalties
- 8.28.090 Severability

8.28.010 Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- a) preventing access to tobacco products by minors;
- b) creating a permitting process for tobacco sales to facilitate enforcement of this Chapter;
- c) prohibiting smoking in workplaces and most other public places; and

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020 Definitions

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

Employee: any individual who performs services for an employer in return for wages or profit, or any individual who volunteers his or her services for a non-profit entity.

Employer: any person, including the City of Cambridge or any agency or department thereof, which regularly uses the services of two or more employees.

Enclosed area: a space bounded by walls and under a roof.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

License Commission: the Cambridge License Commission, as established by St. 1922, c. 95.

Lounge or Bar Area: an area of a restaurant where the primary focus of the business is the service of alcoholic beverages rather than food, although full food service may be available in this area. The type of seating, barriers separating this area from the primary dining areas, and the arrangement of serving stations can help to further determine if this is to be considered a lounge or bar area.

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

Minor: any person under eighteen (18) years of age.

Non-smoking Area: all areas within a public place where smoking is prohibited.

Occupancy Number: the number of persons who may occupy a restaurant, as determined by the License Commission. The number, in certain cases, may include both standing and seated patrons.

Person: shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

Private Club: a place to which the general public is not invited and which requires membership or affiliation as a condition of admittance. A Private Club is not a Public Place, but may be used as a public place, subject to the requirements of this Chapter, for special events open to the general public.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing

homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Restaurant: a space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualer under the provisions of G.L. c. 140. In addition, the person could hold a beer and wine or all alcohol pouring license. For the purposes of this Chapter the restaurant could be re-defined as a bar, lounge, or club after 4:00 or 10:00 p.m.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption.

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

Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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

Workplace: any area within a structure or portion thereof at which one or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways, and entranceways.

8.28.030            Access of Minors to Tobacco Products

(1) Tobacco Sales Permit Required. No person shall sell tobacco products within the City of Cambridge without a tobacco sales permit issued by the Inspectional Services Department. As part of the application process, the applicant will be provided with the following:

- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and
- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free-standing, self-service displays of tobacco products are required to be set up within clear eye view of a staffed store cash register and in no case more than ten (10) feet from at least one such register within the establishment.

#### 8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his designee in writing explaining why an exemption should be granted.

The Commissioner or his designee will inform the employer of his decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

#### 8.28.050 Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions. Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;
- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.
- (i) The Middlesex County Jail/House of Correction or places of incarceration/detention.
- (j) Religious ceremonies where smoking is part of the ritual.

8.28.060 Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Section 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking areas of the restaurant must be displayed near the entrance.

8.28.070. Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or his/her designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) in every area where smoking is prohibited or permitted by this Chapter.

c) Arranging seating so that physical barriers, ventilation systems, and available space are utilized to reduce the exposure to smoke of persons outside the area(s) where smoking is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

8.28.080 Enforcement and Penalties

A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50, for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

8.28.090 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

In City Council June 5, 1995.

Passed to be ordained as amended by a yea and nay vote:- Yeas 6;  
Nays 3; Absent 0.

ATTEST:- D. Margaret Drury  
City Clerk



# City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to an ordinance entitled the "Cambridge Municipal Code".

*Be it ordained by the City Council of the City of Cambridge as follows:*

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, evidence demonstrates that tobacco is extremely addictive; and

WHEREAS, 18 is the legal age to purchase cigarettes in the Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of Cambridge residents voted in favor of Question One to raise the state excise tax on cigarettes and create a Health Protection Fund to advance the goals of tobacco control; and

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Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Smoking," is hereby repealed and replaced by the following new

Chapter 8.28:

Restrictions on Youth Access to  
Tobacco Products and on Smoking in  
Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions
- 8.28.030 Access of Minors to Tobacco Products
- 8.28.040 Prohibition of Smoking in the Workplace
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- 8.28.080 Enforcement and Penalties
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The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- a) preventing access to tobacco products by minors;
- b) creating a permitting process for tobacco sales to facilitate enforcement of this Chapter;
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The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020 Definitions

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Enclosed area: a space bounded by walls and under a roof.

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Private Club: a place to which the general public is not invited and which requires membership or affiliation as a condition of admittance. A Private Club is not a Public Place, but may be used as a public place, subject to the requirements of this Chapter, for special events open to the general public.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing

homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Restaurant: a space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualer under the provisions of G.L. c. 140. In addition, the person could hold a beer and wine or all alcohol pouring license. For the purposes of this Chapter the restaurant could be re-defined as a bar, lounge, or club after 4:00 or 10:00 p.m.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption.

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

Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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

Workplace: any area within a structure or portion thereof at which one or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways, and entranceways.

8.28.030            Access of Minors to Tobacco Products

(1) Tobacco Sales Permit Required. No person shall sell tobacco products within the City of Cambridge without a tobacco sales permit issued by the Inspectional Services Department. As part of the application process, the applicant will be provided with the following:

- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and
- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free-standing, self-service displays of tobacco products are required to be set up within clear eye view of a staffed store cash register and in no case more than ten (10) feet from at least one such register within the establishment.

#### 8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his designee in writing explaining why an exemption should be granted.

The Commissioner or his designee will inform the employer of his decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050 Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions. Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;
- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.
- (i) The Middlesex County Jail/House of Correction or places of incarceration/detention.
- (j) Religious ceremonies where smoking is part of the ritual.

8.28.060 Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Section 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking areas of the restaurant must be displayed near the entrance.

8.28.070. Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or his/her designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) in every area where smoking is prohibited or permitted by this Chapter.

c) Arranging seating so that physical barriers, ventilation systems, and available space are utilized to reduce the exposure to smoke of persons outside the area(s) where smoking is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

8.28.080 Enforcement and Penalties

A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50, for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

8.28.090 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

In City Council June 5, 1995.

Passed to be ordained as amended by a yea and nay vote:- Yeas 6;  
Nays 3; Absent 0.

ATTEST:- D. Margaret Drury  
City Clerk



**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139  
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Legal Counsel

Birge Albright  
Gail S. Gabriel  
Arthur J. Goldberg  
Linda A. Stamper  
Deborah R. Cantela  
Nancy E. Glowa

May 22, 1995

To: City Council

From: Birge Albright BA

Re: Smoking Ordinance

I attach the following:

1. My rewrite of Section 8.28.030 (5) dealing with Self-service displays. Amendment introduced by Vice-Mayor Russell and Councillor Galluccio. Rewrite includes final sentence requested by Councillor Duehay.

2. My rewrite of Section 8.28.060 (Restaurant, Bar, Lounge or Club). Amendment introduced by Chamber of Commerce, Vice-Mayor Russell and Councillors Galluccio and Sullivan. In this rewrite, I have tried to simply tighten the language without changing the meaning. However, I have added a new subsection J. This is the sign requirement, which is found in the Chamber amendment as Section 8.28.070 (f).

If the Chamber version of Section 8.28.060 is adopted, the following definitions should be deleted from Section 8.28.020:

Advisory Committee  
Cambridge Liquor Advisory Board  
Cambridge United for Smoking Prevention (CUSP)

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(5) Self-service Displays

Upon passage of this Section, all free-standing, self-service displays of tobacco products are prohibited, except pre-existing displays. All cigarettes and chewing tobacco must be kept behind a counter at the cash register from which they are sold, or locked in a display case. Each existing free standing self-service display of tobacco products must be set up within ten feet of a cash register in the store and within clear view of one such register. The exemption for a pre-existing display will be revoked if it is found that the tobacco sales permit holder has sold a tobacco product from such display to a minor.

4-5-0-0 .

8.28.060

Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the

provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Section 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking areas of the restaurant must be displayed near the entrance.

C. Galluccio

Access of Minors  
to Tobacco Products

Substitution for Access to minors Section 8.28.030. This section should be deleted and  
the following section should be inserted.

subsection (5)

(5)

All free - standing, self service displays of tobacco products are required to be set up  
within clear eye view of ~~at~~ <sup>staffed (cash)</sup> store cash registers and in no case more than 10 ft. from  
at least one such register within the establishment. ~~All cigarettes and chewing tobacco  
must be kept behind a counter at the cash register from which they are sold, or in  
locked display cases.~~ Enforcement of this Section will be dealt within the same manner  
as described as 8.28.080 of this ordinance.

~~1-1-1-1-1~~

5-4-0-0.

coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

FHD

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(5) Self-service Displays. All free-standing, self-service displays of tobacco products are prohibited. All cigarettes and chewing tobacco must be kept behind a counter at the cash register from which they are sold, or in locked display cases.

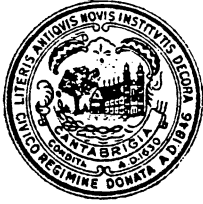
4-5-0-0

8.28.040

Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any



# City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to an ordinance entitled the "Cambridge Municipal Code".

*Be it ordained by the City Council of the City of Cambridge as follows:*

Be it ordained by the City Council of the City of Cambridge as follows:

WHEREAS, evidence demonstrates that tobacco is extremely addictive; and

WHEREAS, 18 is the legal age to purchase cigarettes in the Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of Cambridge residents voted in favor of Question One to raise the state excise tax on cigarettes and create a Health Protection Fund to advance the goals of tobacco control; and

WHEREAS, 90% of all smokers begin smoking as teenagers; and

WHEREAS, compliance checks in Cambridge have to date demonstrated that minors were able to purchase cigarettes in ten of eleven stores visited; and

WHEREAS, the Surgeon General of the United States found in her 1994 Report that community-wide efforts including enforcement of minors access laws are effective at reducing adolescent use of tobacco; and

WHEREAS, this data indicates that there is a significant health obligation to the children of Cambridge to reduce their easy and illegal access to tobacco; and

WHEREAS, the US Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Class A known human carcinogen and major source of indoor air pollution putting all members of the population at increased health risk; and

WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act, which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a disability.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Smoking," is hereby repealed and replaced by the following new

Chapter 8.28:

Restrictions on Youth Access to  
Tobacco Products and on Smoking in  
Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions
- 8.28.030 Access of Minors to Tobacco Products
- 8.28.040 Prohibition of Smoking in the Workplace
- 8.28.050 Restrictions on Smoking in Public Places
- 8.28.060 Restrictions on Smoking in Restaurants, Bars and Lounges
- 8.28.070 Implementation
- 8.28.080 Enforcement and Penalties
- 8.28.090 Severability

8.28.010 Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- a) preventing access to tobacco products by minors;
- b) creating a permitting process for tobacco sales to facilitate enforcement of this Chapter;
- c) prohibiting smoking in workplaces and most other public places; and

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020 Definitions

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

Employee: any individual who performs services for an employer in return for wages or profit, or any individual who volunteers his or her services for a non-profit entity.

Employer: any person, including the City of Cambridge or any agency or department thereof, which regularly uses the services of two or more employees.

Enclosed area: a space bounded by walls and under a roof.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

License Commission: the Cambridge License Commission, as established by St. 1922, c. 95.

Lounge or Bar Area: an area of a restaurant where the primary focus of the business is the service of alcoholic beverages rather than food, although full food service may be available in this area. The type of seating, barriers separating this area from the primary dining areas, and the arrangement of serving stations can help to further determine if this is to be considered a lounge or bar area.

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

Minor: any person under eighteen (18) years of age.

Non-smoking Area: all areas within a public place where smoking is prohibited.

Occupancy Number: the number of persons who may occupy a restaurant, as determined by the License Commission. The number, in certain cases, may include both standing and seated patrons.

Person: shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

Private Club: a place to which the general public is not invited and which requires membership or affiliation as a condition of admittance. A Private Club is not a Public Place, but may be used as a public place, subject to the requirements of this Chapter, for special events open to the general public.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing

homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

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Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and
- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit or a copy must be prominently posted at each point of sale, within the business location.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free-standing, self-service displays of tobacco products are required to be set up within clear eye view of a staffed store cash register and in no case more than ten (10) feet from at least one such register within the establishment.

#### 8.28.040 Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. If provision of a smoke-free lounge is impossible or impractical, the employer may request an exemption from the Commissioner or his designee in writing explaining why an exemption should be granted.

The Commissioner or his designee will inform the employer of his decision within 30 days of receipt of the request. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee, prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050 Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions. Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.
- (f) indoor spaces while used for properly licensed beano games for charity to which the public is invited;
- (g) 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 Chapter; and
- (h) Bowling alleys, but not restaurants, bars, or lounges within the bowling facilities, which shall be subjected to the requirements of section 8.28.060 of this Chapter.
- (i) The Middlesex County Jail/House of Correction or places of incarceration/detention.
- (j) Religious ceremonies where smoking is part of the ritual.

8.28.060 Restaurant, Bar, Lounge or Club

A. This section shall not apply to any restaurant with a seating capacity of fewer than twenty-five persons, nor to any area in a bar lounge or club as defined in Section 8.28.020. Bars, lounges and clubs are exempt from any restrictions contained in this Chapter.

B. No person shall smoke in any restaurant, except in specifically designated smoking areas. This prohibition does not apply where an entire room of the restaurant is being used for a private social function to which the general public does not have access.

C. Smoking areas may be designated by the proprietor or other person in charge of a restaurant, except in places where smoking is prohibited by law. A smoking area shall comprise no more than fifty percent of the seating capacity of the restaurant. Where a restaurant consists of a single room, the provisions of this section shall be considered satisfied if one side of the room is reserved and posted as a no-smoking area, provided that such area comprises no less than fifty percent of the seating capacity of the restaurant. In computing percentages under this subsection C, the computation shall not include seating capacity for any area defined as a bar lounge or club.

D. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke on persons in adjacent no-smoking areas. To the extent that the shape of the room allows maximum separation, the proprietor must utilize natural barriers to satisfy the provisions of this Chapter. If such natural barriers do not exist, the proprietor must make every effort to set up the space to inhibit the transfer of smoke to no-smoking areas.

E. Children under the age of twelve may not be seated in a smoking area. Children between the ages of twelve and eighteen may be seated in a smoking area only if accompanied by a parent or guardian.

F. The proprietor or other person in charge of a restaurant shall make reasonable efforts to prevent smoking in the no-smoking areas of the restaurant by:

1. Posting appropriate signs;
2. Arranging seating to provide a smoke free area;
3. Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the restaurant.
4. Any other means which may be appropriate.

G. In addition to the remedies provided by Section 8.28.080 of this chapter, the Inspectional Services Department or any person aggrieved by the willful failure of the proprietor or other person in charge of a restaurant to comply with any provisions of this section may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

H. Nothing in this section shall make lawful smoking in any area in which smoking is or may hereafter be prohibited by law.

I. This Chapter shall not apply to bars or bar areas of restaurants, which are devoted to the service of alcoholic beverages for consumption on the premises and in which the serving of food is incidental to the consumption of alcoholic beverages, or to restaurants converted to full bar establishments during certain hours.

J. A sign indicating the percentage of seats in the no-smoking and smoking areas of the restaurant must be displayed near the entrance.

8.28.070. Implementation

1. It shall be incumbent on every person having control of places covered by this Chapter, or his/her designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) in every area where smoking is prohibited or permitted by this Chapter.

c) Arranging seating so that physical barriers, ventilation systems, and available space are utilized to reduce the exposure to smoke of persons outside the area(s) where smoking is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

8.28.080 Enforcement and Penalties

A. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50, for the first offense, \$100 for the second offense, and \$300 for the third and subsequent offenses committed in any 12-month period. The penalty for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

B. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the tobacco sales permit shall be subject to suspension or revocation for violations of the provisions of §8.28.030. The Commissioner of Inspectional Services, after a hearing, may suspend the sales permit for up to 15 days for a single violation, for up to 60 days for two violations within a 12 month period, and may revoke such permit for three or more violations within a 12 month period.

(2) Common Victualer and Liquor Licenses

It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by this Chapter to knowingly permit an infraction of this Chapter on said premises or place. If such person has a common victualler or liquor license, and if an enforcing officer has issued three or more tickets within a 12-month period for observed infractions of this Chapter on said premises, the License may hold a hearing following its standards and procedures used to regulate license-holders to determine if it should suspend, revoke, or condition said license because of said infractions.

D. Injunctive Relief

The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter.

8.28.090 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

In City Council June 5, 1995.

Passed to be ordained as amended by a yea and nay vote:- Yeas 6;  
Nays 3; Absent 0.

ATTEST:- D. Margaret Drury  
City Clerk

**Mass. Towns/Cities with a higher percentage of non-smoking percentage in restaurants than Cambridge:**

Amherst (100%)	Southampton (100%)	Westfield (100%)
Andover (100%)	Hingham (75%)	South Hadley (100%)
Arlington (100%)	Norwell (75%)	Wilbraham (75%)
Attleboro (100%)	Plymouth (100%)	Williamstown (70%)
Bedford (100%)	Holden (100% or separate rooms)	Watertown (80%)
Belmont (100%)	Westford (75%)	Foxboro (100%)
Brookline (100%)	Lawrence (75%)	Wakefield (100%, includes bars)
Cohasset (75%)	Lenox (100%)	Everett (75%)
Concord (100% pending)	Lee (100%)	
Dudley (75%)	Stockbridge (100%)	
Easthampton (100%)	Mansfield (75%)	
East Longmeadow (75%)	Sharon (100%)	
Falmouth (75-100%)	Needham (75%, 100% under consideration)	
Gloucester (100%)	Dover (100%)	
Lexington (100%)	Medfield (100%)	
Sandwich (80-100%)	Newton (100%)	
Tewksbury (100%)	Northampton (100%)	
Pittsfield (100%)	Plainfield (100%)	
Reading (100%)	Chelmsford (75%)	
Marblehead (67%)	Swampscott (75%)	

**MA. Towns and Cities that have a Free-Standing Display Restrictions or Bans:**

Acushnet	Methuen (Ban)	Saugus	Lenox (Ban)
Andover	Middleton	Swampscott	Lee (Ban)
Arlington	North Andover (Ban)	Swansea	Stockbridge (Ban)
Athol	Sandwich	Wakefield	Clinton
Attleboro	Uxbridge	Canton	Fitchburg
Ayer	Tewsbury	Foxboro	Gardner
Barre	Dedham	Westfield	Hubbardston
Bellingham	Dudley	South Hadley	Maynard
Billerica	Easthampton	Wilbraham	Stow
Bolton	Southampton	Williamstown	Templeton
Brockton	Framingham	Winchester (Ban)	Winchendon
Burlington	Gloucester	Hingham (Ban)	Mansfield
Falmouth	Haverhill	Plymouth	Easton (Ban)
Lexington	Somerville	Holden	Norton (Ban)
Mendon	Nahant	Lawrence	Sharon (Ban)
Marion	Marlborough	Milford	Milton
Groton	Lancaster	Natick (Ban)	Needham
Dover	Medfield	Westwood	Brookline
Newton	North Adams (Ban)	Northampton	Pittsfield (Ban)
Quincy			

**States and Cities that have stronger no-smoking regulations than in Cambridge:**

New York City

Westlake, Texas (went smoke-free before Austin and is contiguous to the Austin)

Austin, Texas - *UNW. town*

California -- restaurants only, tough ventilation standards for bars are being phased in (first San Francisco, LA, and Beverly Hills went smoke free)

Vermont (starting July 1)

Utah

Maryland

Washington State

Aspen, CO

Telluride, CO

-- And in hundreds of cities there is legislation pending or they are about to issue strict health regulations.

*100% smoke-free*

# **LIFE ENERGY ASSOCIATES**

## **Indoor Air Quality Evaluation**

20 Darton Street, Concord, MA 01742  
Telephone (508) 369-5680  
Facsimile (508) 369-0097

August 25, 1994

Mr. Tom Hall  
Division of Consumer Affairs  
Occupational Safety and Health Administration  
200 Constitution Avenue, N.W., Room N3649  
Washington, D.C. 20210

### **SUBMITTAL OF TESTIMONY**

#### **FROM DAVID W. BEARG, P.E. CONCERNING PROPOSED INDOOR AIR QUALITY RULES**

I have reviewed the proposed rules on Indoor Air Quality (IAQ) that appeared in the Federal Register of April 5, 1994. I wish to comment today on the need to protect non-smokers from the impact of ETS. My perspective on preparing these comments is based on my experience over the past fourteen years as an Indoor Air Quality consultant performing investigations to evaluate the performance and condition of HVAC and other building systems as to how they relate to the achievement of good Indoor Air Quality. The specific experience that I wish to focus on here, however, is the research that I have performed to measure the public's exposure to environmental tobacco smoke in restaurants. This research is being performed under a Demonstration Grant of the Massachusetts Tobacco Control Program.

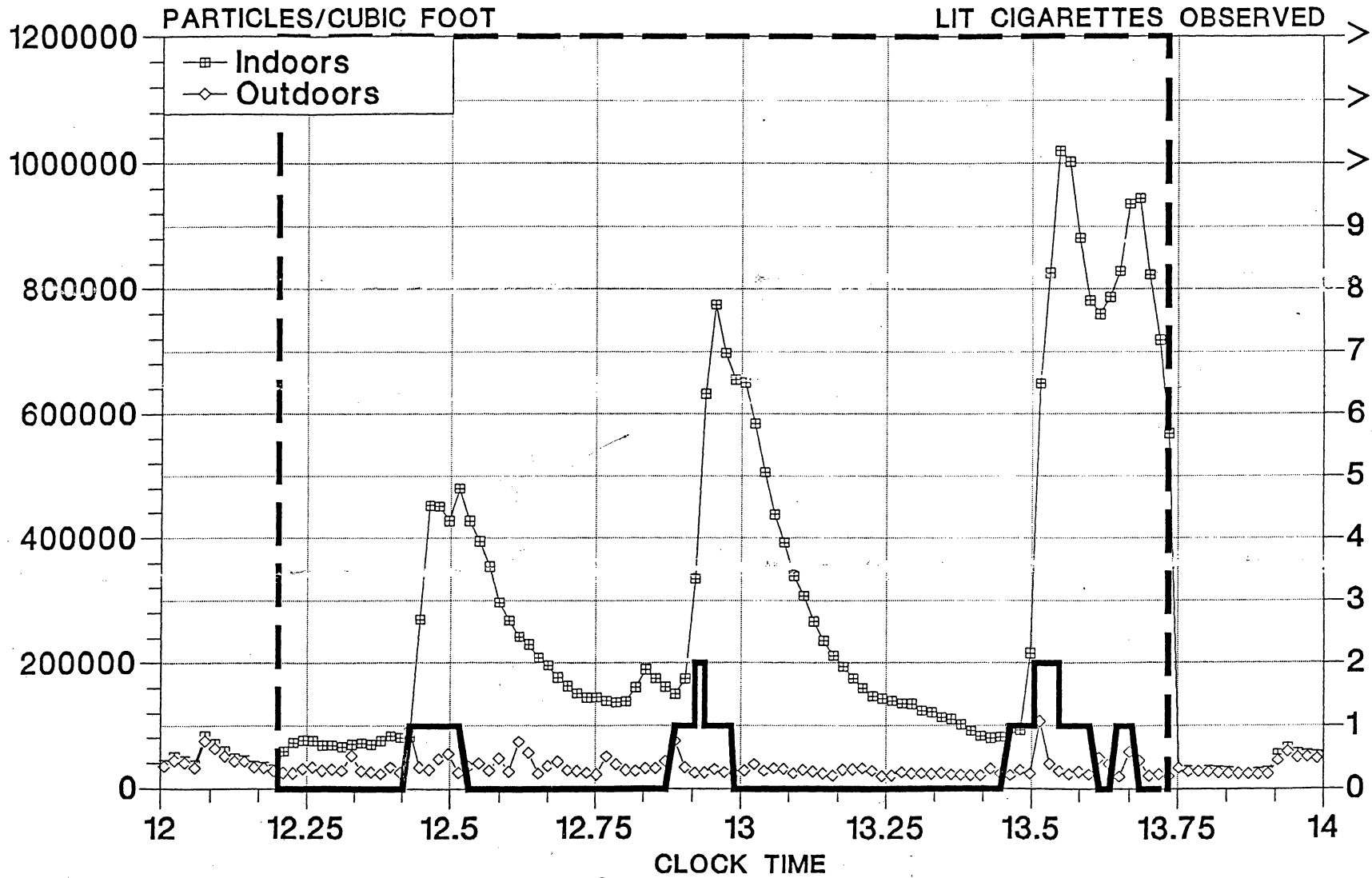
Please accept the late submittal of my testimony. I was not able to comply with the original published deadline, because I had not yet received authorization from the Massachusetts Tobacco Control Program to release portions of these research results. Therefore, I would like to submit a copy of the Summary Report of Assessing the Public's Exposure to ETS in Restaurants. In addition to this document I also wish to submit data plots for just one restaurant in this group that was visited on four different occasions. This restaurant was visited on June 10, July 23, July 25, and August 19, all in 1994. During these measurement intervals, which compared indoor and outdoor levels of respirable particulate (RSP) levels in the 0.5 to 5.0 micron range, conclusive evidence is provided which demonstrates the impact on so-called "non-smoking" areas of this restaurant when just one cigarette is lit up in the smoking area. On one of these site visits, August 19, there were no smokers observed to be present during the sampling interval. One of the characteristics of this particular restaurant, with the smoking section located along one wall and next to the central aisle of the facility, is that many seats in the non-smoking section are afforded a good view to observe when smoking activity is occurring. One this date, as can be observed in that data plot, the indoor values are very similar to the outdoor values, both averaging just below 400,000 particles per cubic foot (pcf). This one day of data contrasts strikingly with the data for the other three days, when

smoking activity was observed. On June 10, the outdoor air was very clean, averaging less than 50,000 pcf. The combustion of just one cigarette drove up the particle counts to well over 400,000 pcf. Later during the sampling interval, two cigarettes were observed to be smoked and the short-term particle count jumped to over 750,000 pcf. Again, two more cigarettes were observed to be smoked 30 minutes later and the particle counts jumped up to over 1,000,000 pcf. It should be noted however, that since the peak concentrations of ETS have been reported to be less than 0.5 microns, the data reported in this study actually understates the number of respirable particles present. For the sampling performed in July, the outdoor values were higher but the impact of just one or two cigarettes is still very significant. On July 23, the outdoor values were decreasing from 600,000 pcf down to 420,000 pcf over the measurement interval. Smoking observed early on in the measurement interval drove the particle counts up to over 1,000,000 pcf. After the termination of smoking these levels began dropping back to the outdoor levels, however, the combustion of another cigarette at 12:30 spiked the particle counts back up to over 700,000 pcf. For the data collected on July 25, the initial interval with no smoking observed, had indoor levels at or slightly below the outdoor levels of around 650,000 pcf. Two smokers were observed to light up almost simultaneously at 1:00 p.m. (1300 hours) and corresponding the particle counts spiked up to almost 1,400,000 pcf.

The particulate phase of ETS is very important component because it represents a mechanism for the transport of the irritating and toxic chemicals of ETS to be deposited in the lungs of non-smokers. This investigation does not deal specifically with the specific health effects of ETS. Its major focus is to identify the short term characteristics of RSP levels as an indicator of the dynamics of the generation and dilution of ETS in restaurants with mechanical ventilation and the recirculation and direct transport of air from smoking sections to areas intended to protect sensitive individuals from the adverse health effects of exposure to second hand smoke.

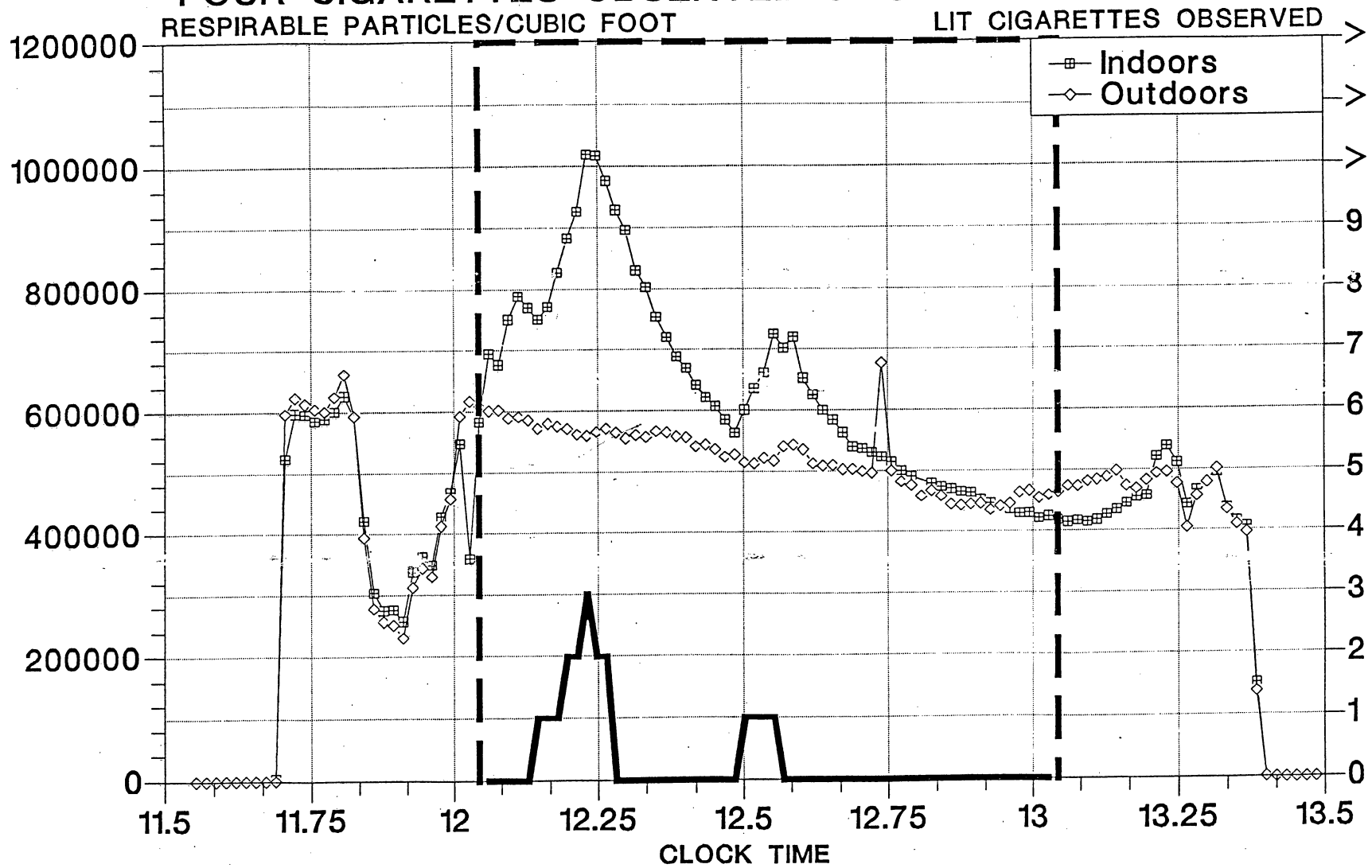
Please note that this measurement protocol involves two calibrated Climet laser particle counters that are first turned on with an absolute filter in place, the two units then measure the same office, outdoor, or automobile environment, to make sure that they continue to provide consistent results, and then one unit is brought in to the restaurant. This indoor particle counter is positioned within a piece of luggage on a luggage cart, so as to not draw attention to itself. At the conclusion of the sampling interval, indicated by the vertical dashed lines in the plots, the two units are placed together again and then, after an appropriate interval, have the absolute filters reinstalled. Again, after a short interval of time, both units are turned off and their data is downloaded for analysis.

RESPIRABLE PARTICLE COUNT DATA  
ICE CREAM & MORE RESTAURANT A  
SIX CIGARETTES OBSERVED IN ONE AND A HALF HOURS



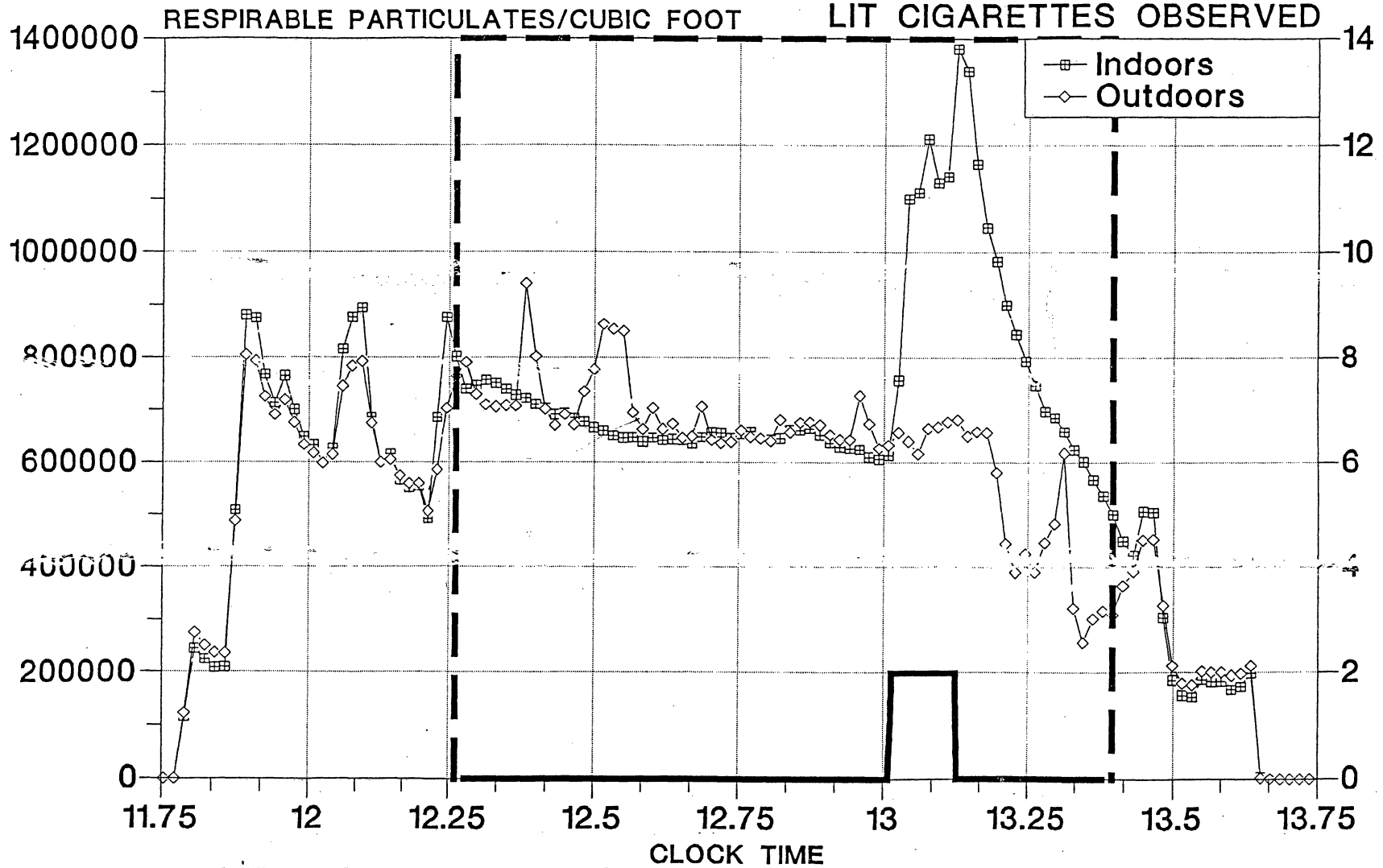
LIFE ENERGY ASSOCIATES  
SAMPLING ON JUNE 10, 1994

# RESPIRABLE PARTICLE COUNT DATA ICE CREAM & MORE RESTAURANT A FOUR CIGARETTES OBSERVED SMOKED IN ONE HOUR



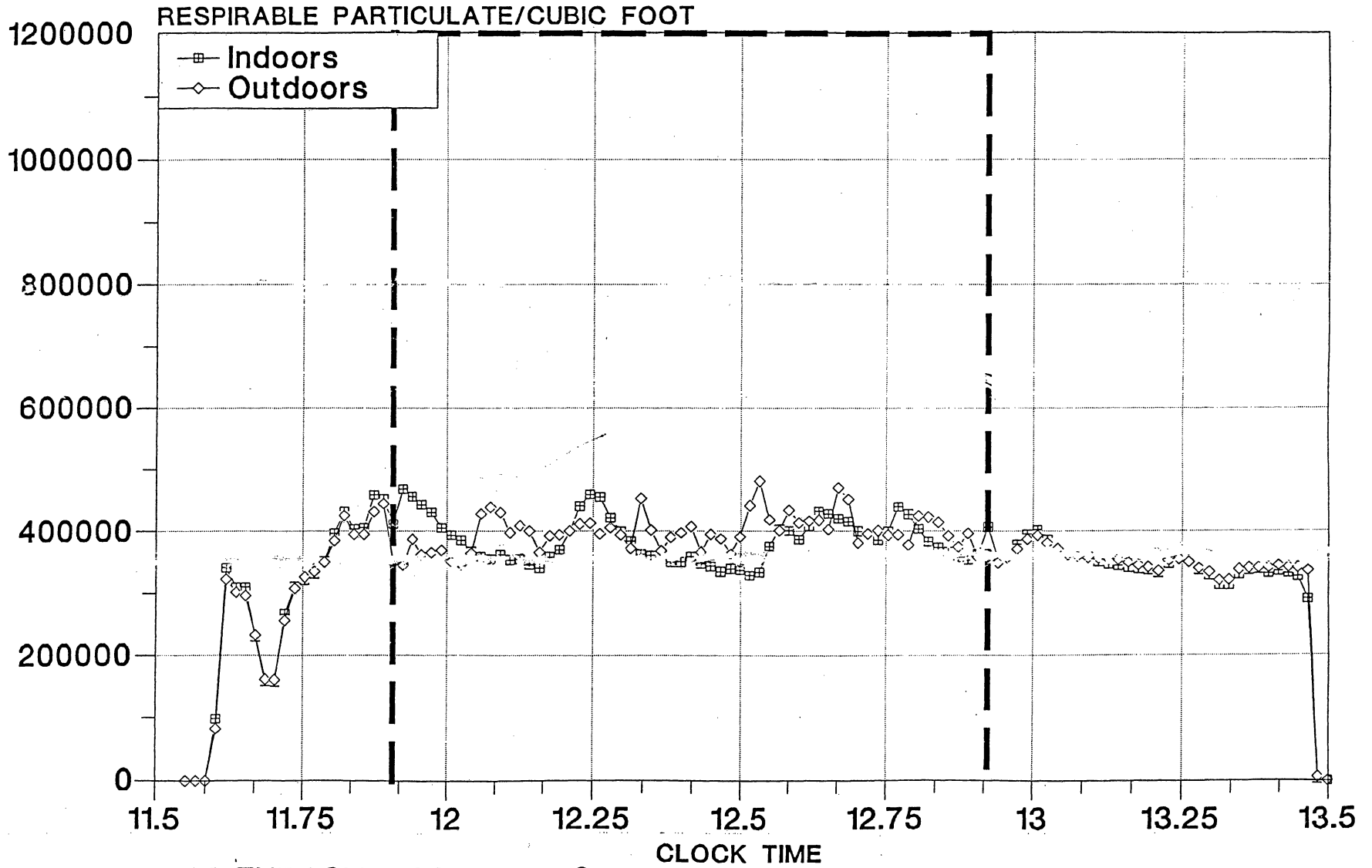
LIFE ENERGY ASSOCIATES  
SAMPLING ON JULY 23, 1994

RESPIRABLE PARTICULATE COUNT DATA  
ICE CREAM & MORE RESTAURANT A  
TWO CIGARETTES OBSERVED SMOKED IN ONE HOUR



LIFE ENERGY ASSOCIATES  
SAMPLING ON JULY 25, 1994

# ICE CREAM & MORE RESTAURANT A NO SMOKING OBSERVED



LIFE ENERGY ASSOCIATES  
SAMPLING ON AUGUST 19, 1994

# City of Cambridge

MASSACHUSETTS

*Committee Reports*  
~~Unfinished #2~~

In City Council

5/8

1995

*C Trust Table*

	YEA	NAY	ABSENT	PRESENT
Ms. Kathleen L. Born	✓			
Mr. Francis H. Duehay	✓			
Mr. Anthony Galluccio		✓		
Mr. Jonathan S. Myers	✓			
Mrs. Sheila T. Russell		✓		
Mr. Michael A. Sullivan		✓		
Mr. Timothy J. Toomey, Jr.		✓		
Ms. Katherine Triantafillou	✓			
Mayor Kenneth E. Reeves	✓			

5 4 0 0

## City of Cambridge

The Ordinance Committee held a public meeting on April 25, 1995 beginning at 6:45 p.m. in the Sullivan Chamber to consider proposed amendments to the Smoking Ordinance. Present at the hearing were Vice Mayor Sheila T. Russell, Chair of the Committee, Councillor Kathleen L. Born, Councillor Francis H. Duehay, Councillor Michael A. Sullivan, and Councillor Katherine Triantafillou.

Vice Mayor Russell convened the hearing and explained the procedures for the hearing. She noted that this was a working meeting in continuation of the March 29th meeting, and that in light of the amount of public comment at that meeting, there would not be additional public testimony at this meeting.

Councillor Duehay noted that the Law Department had submitted a revision to the proposed amendment considered at the last meeting, and that the new draft incorporated changes discussed by the Ordinance Committee at that meeting. He moved substitution of the Law Department's revised draft and the motion passed unanimously on a voice vote.

Councillor Sullivan noted that there was also a revised draft of the proposed amendment submitted on behalf of the Chamber of Commerce and the Restaurant Association at the last meeting. (Attachment B). He moved substitution of this revised proposal. On a voice vote, the motion passed unanimously.

Vice Mayor Russell introduced Birge Albright, Legal Counsel, City Solicitor's Office, to explain some additional changes that were inadvertently omitted from the new draft. Those changes have been incorporated in the draft attached to this report as Attachment A. After Mr. Albright described these additions, Councillor Duehay moved that they be incorporated into the proposal under consideration. The motion passed unanimously on a voice vote.

Vice Mayor Russell asked for an explanation of what was done with the issue regarding bowling alleys.

Mark Gottlieb, Chair of the CUSP Public Policy Committee, stated that he met with Joseph Martignetti, owner of Lanes and Games, and Mr. Martignetti agreed to make several changes to limit smoking. The CUSP Committee then suggested changes to the proposed amendment to exempt the bowling alley as follows: the bowling alley has been eliminated as a public place, bowling alleys have been added as an exception. Mr. Gottlieb noted that the proposed ordinance allows the Commissioner of Health and Hospitals to remove exemptions if there is a problem with the exemption.

Vice Mayor Russell asked about bingo games. Mr. Gottlieb said that the proposed ordinance (page 13) now exempts bingo games. In addition the definition of private clubs has been clarified.

Mr. Gottlieb explained that the changes that Mr. Martignetti will make will be to set aside a certain number of lanes as smoke free lanes and to prohibit smoking at youth leagues.

Councillor Duehay moved that the proposed ordinance be forwarded to the full City Council without recommendation.

Councillor Sullivan moved that the Restaurant Association's proposed amendment also be sent to the full City Council without recommendations.

Councillor Triantafillou questioned sending both proposed ordinances to the full City Council.

Councillor Duehay noted that procedurally it makes little difference, because both proposals will be in the minutes, and any City Councillor can move substitution.

Councillor Born stated that she would like to hear testimony on both the proposed ordinance and the proposed amendment.

Councillor Sullivan requested an explanation of the calculation of the changes from both sides.

Vice Mayor Russell requested that one representative from each side discuss the proposal.

John Clifford, Aberdeen Avenue, owner of Green Street Grille, stated that over 75 restaurants have agreed to the new compromise proposal submitted by the Chamber and the Restaurant Association.

Kate Dempsey, Coordinator, CUSP, stated that the Chamber's proposed changes to section 8.28.060 would result in the same provisions as the 1987 ordinance with two changes: the 30% non-smoking seating is increased to 50%, but bar/lounge areas are excluded, so that essentially in many cases it will be 70-75% smoking. She noted that the Chamber's compromise does not refer to the after-dinner hours.

Councillor Born asked about the underage sales provisions. Ms. Dempsey said that those provisions are the same in both proposals. The differences are all in the restaurant provisions.

Councillor Born asked whether the Chamber proposal means that no bars will have non-smoking seating. Ms. Dempsey said that if the food is not being served, then there is no requirement for non-smoking seating in the Chamber proposal. Under the CUSP proposal, a restaurant that changes to a bar theme later in the evening is still required to have non-smoking seats. There are also several other differences.

Councillor Sullivan asked why a new board has been created instead of leaving it under the License Commission. Ms. Dempsey said that restaurateurs wanted a grievance procedure with restaurateurs included, just for exemption provisions relating to restaurants.

Councillor Sullivan noted that in the other sections of the ordinance, exemptions are left to the commissioner of Health and Inspectional Services Department.

Vice Mayor Russell asked whether there should be a public hearing at the City Council.

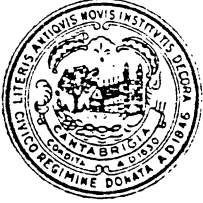
Councillor Duehay restated the motion on the floor to move that both proposals be forwarded to the City Council without recommendation. The motion passed on a voice vote, with Councillor Born voting no.

The meeting was adjourned at 7:25 p.m.

For the Committee



Vice Mayor Sheila T. Russell, Chair



# City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Five

## AN ORDINANCE

In amendment to the "Municipal Code of the City of Cambridge."

*Be it ordained by the City Council of the City of Cambridge as follows:*

That Chapter 8.28 of the Municipal Code of the City of Cambridge entitled "Smoking" be and hereby is repealed and replaced by a new Chapter 8.28 entitled: "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places."

**In City Council June 5, 1995.**

**Passed to be ordained as amended by a yea and nay vote:- Yeas 6;  
Nays 3; Absent 0.**

ATTEST:- D. Margaret Drury  
City Clerk

NOTE: Pursuant to the provisions of General Laws, Chapter 40, Section 32A, Tercentenary Edition, the ordinance as aforesaid which exceeds in length eight octavo pages of ordinary book print may be summarized for publication in a newspaper of general circulation in the city with the further provision that said ordinance may be examined and obtained at the City Clerk's Office during office hours and that any objection to its invalidity by reason of any defect in the procedure of adoption may only be made within ninety days after the posting or the second publication.

ATTEST:- D. Margaret Drury  
City Clerk

# City of Cambridge

The Ordinance Committee held a public hearing on March 29, 1995, beginning at 5:40 p.m. in the Sullivan Chamber for the purpose of considering proposed amendments to the Smoking Ordinance.

Present at the hearing were Vice Mayor Sheila T. Russell, Chair of the Committee, Mayor Kenneth E. Reeves, Councillor Kathleen L. Born, Councillor Francis H. Duehay, Councillor Anthony D. Galluccio, Councillor Jonathan S. Myers, Councillor Michael A. Sullivan, Councillor Timothy J. Toomey, Jr., Councillor Katherine Triantafillou, and City Clerk D. Margaret Drury.

Vice Mayor Russell convened the hearing and explained the purpose and the format. She invited Dr. Melvin Chalfen, former Health Commissioner for the City of Cambridge to introduce the presentation. Dr. Chalfen introduced Ms. Kate Dempsey, Coordinator for Cambridge United for Smoking Prevention, (CUSP), Mark Gottlieb, Chair CUSP Policy Subcommittee; Pat Anderson, Policy and Enforcement Coordinator, Tobacco Program; Carole Cranos, Tobacco Education Coordinator; Paul Schlaver, Executive Director, Cambridge Consumer's Council.

Dr. Chalfen stated that the trend of public health in Cambridge is to act in proactive rather than reactive manner. Out of this perspective has come a particular concern with the health of children. This ordinance would decrease the availability of tobacco to youth and deal with the public health concerns of environmental tobacco smoke.

Dr. Chalfen then introduced Kate Dempsey to begin the presentation. Ms. Dempsey said that this ordinance is the result of twelve months of work, intensive discussions and negotiations. It will reduce the likelihood of youth starting smoking. It should not be equated with ordinances of Brookline and other cities that have enacted total bans on restaurant smoking. It does not require complete cessation of smoking or ventilation systems. She urged the City Council to think of the proposed ordinance as a whole, and to understand that significant compromises have been made to get to this point.

Caroline Cranos, Tobacco Education Coordinator, described the particular youth access issues. In Massachusetts it is against the law to sell any tobacco to youth under 18. But it is very easy for youth to purchase. She stated that in recent compliance checks, youth were able to purchase cigarettes 58% of the time, 33 out of 58 attempts. The proposed ordinance would prohibit sales to minors, require vendors to check identification of young people, require vendors to purchase permits to sell tobacco. She read a letter from the City of Somerville, which requires such a permit and has found it very effective. She stated that the ordinance would also prohibit sales of single cigarettes. Several stores in Cambridge sell single cigarettes for .25 cents which appeal to young buyers.

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Pat Anderson, of the Tobacco Program, then presented information about studies of the effects of environmental tobacco smoke in the workplace. Providing separate smoking places in the same ventilation system is not effective. Only either smoke-free workplaces or separate ventilation can eliminate environmental tobacco smoke.

Dr. James Davis, Director of Undergraduate Studies at Harvard, discussed the effects of second-hand smoke and cited a study of indoor air particles in a restaurant. He submitted a report of the study.

Mark Gottlieb, 36 Fairfield Street, Chair, CUSP Policy Subcommittee, discussed the committee's decision to recommend changes to the current ordinance, which took effect in 1987. He noted that the change in the ordinance relating to restaurants is an updating which reflects current practice. The proposal for 30% smoking seating reflects actual practice right now; the reduction to 15% in the second year represents the change and improvement. In Beverly Hills, accurate studies showed no reduction in restaurant revenues when the restaurants become smoke free. California, Washington and Utah all require smoke free restaurants. He urged the City Council not to make further compromises in the restaurants provisions. This proposal already represents a compromise.

Paul Schlaver, 188 Green Street, Director, Cambridge Consumer's Council began his presentation by stating that Bob Bersani, Managing Director of Inspectional Services, was not able to be here tonight, but wanted to convey that he believes that this is a workable ordinance.

Mr. Schlaver stated that the drafters of the ordinance had the following goals, all of which he believes have been met: (1) To do no economic harm to Cambridge businesses by forcing even one person to go to another city because they felt restricted by the ordinance; (2) to update the current ordinance to reflect the current non smoking trends in Cambridge and to show the City's concerns about health impacts; (3) To try to acknowledge the complexities and varieties present in the bars and restaurants in Cambridge and not make something too generic; and (4) To try to develop a workable plan that would not add cost to the merchants nor create a new bureau for the City.

Mayor Reeves requested that speakers state whether there is a factual basis for assumptions such as those stated about what people frequent which establishments.

Councillor Triantafyllou requested that the presentation go forward without interruption.

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Mr. Schlaver then described the results of this process. In the proposed ordinance there is a distinction between a dining restaurant without a bar or lounge. There is a full smoking option in the bar and lounge areas of restaurants. There is 50% smoking in bars or clubs with no separate room or ventilation requirements. There are exemptions based on size and format designed to be most helpful to the small neighborhood bar with little dining. The phased in reduction in the second year is only for restaurants.

John O'Brien, Commissioner of Health and Hospitals, stated that this is a very responsible proposal with very liberal exemptions. The data is clear, smoking kills and second hand smoke kills. The leadership that this City Council has shown on this issue has been superb, yet still 76.4 % of youth indicated in a 1994 survey that they had no problem buying cigarettes. He urged adoption of the proposed amendments.

Steve Berenson, 2253 Mass. Avenue, Assistant Attorney General, stated that he is here to express Attorney General's Scott Harshbarger's support for the proposed ordinance. The most important aspect of the tobacco problem is the use by underage consumers of tobacco. The Attorney General did a statewide survey of use of tobacco by minors. Children were able to purchase illegally 65% of the time. Then Attorney General Harshbarger initiated enforcement proceedings under the Consumer Protection Act against the five most egregious violators, all large supermarket chains. Studies show that a broad based and continuing program of local enforcement is necessary, and that is what the proposed ordinance would do, particularly with the requirement for the licensing of vendors. He added that regarding the restaurant restrictions, Attorney General Scott Harshbarger has already called for smoke-free fast food restaurants. The Attorney General is very supportive of the Cambridge restaurant provisions.

Dr. Edward Nardell, North Road, Newtonville, chest physician at the Cambridge Hospital, stated that he addresses the issue as a chest physician and a public health official. He then provided details of the detrimental effects of smoking on air quality and health and on how regulating smoking increases the ability of people to quit smoking. He urged the City Council to support the proposal.

Mayor Reeves asked for more details about the compliance checks in which minors bought cigarettes in Cambridge. He also asked about what studies exist about youth smoking in Cambridge.

Kate Dempsey said there is information from two recent surveys. There is a 1992 Teen Health Survey and a 1994 Teen Health Survey. Mayor Reeves urged the drafters to provide as many specifics about the Cambridge situation as possible.

Councillor Sullivan noted that the penalty in the ordinance for persons who smoke in restaurants is a penalty on the licensee.

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Paul Schlaver responded that the provision for loss of license is meant for the sellers of cigarettes to minors, and is not meant to apply to restaurant owners for the seating provisions.

Councillor Sullivan asked about the requirements for smoking lounges in the workplace. Mark Gottlieb stated that the only change in the current ordinance is the provision that a smoking lounge be vented to the outside.

Councillor Sullivan questioned the wisdom of requiring a lounge for nonsmokers if one is provided for smokers.

Councillor Sullivan then asked why the committee was not directing its efforts to a statewide law.

Mark Gottlieb said that there is ongoing effort on the statewide level, but that it is much easier for tobacco lobbyists to influence decisions at the state level through campaign contributions than at the local level. He noted that the only thorough scientific look at local revenues showed no loss in restaurant revenues.

Councillor Sullivan asked what is the present penalty for selling to a minor under the state statute. Mr. Gottlieb said that the penalty is the same; this is a way to get local enforcement.

Councillor Sullivan asked about the impact on police. Kate Dempsey said that the Inspectional Services Department will also have enforcement power. Councillor Sullivan stated that, nevertheless, he believes there would be enforcement demands on the police.

Vice Mayor Russell asked why a regulation is required when restaurants have increased nonsmoking seating on their own.

Paul Schlaver said that the present ordinance should reflect the present reality; it is also a way to make a public health statement; and finally, restaurants can create more clarity and less drifting smoke.

Mark Gottlieb added that over 1100 nonsmokers die each year in Massachusetts because of environmental tobacco smoke. It is important to create a safer environment.

Mayor Reeves stated that the issues provide a conundrum. This is a real public policy issue. The health risks are known. Why do people continue to smoke? Why do poor people and minorities smoke? He is disturbed by the possibility of Cambridge having a policy that Boston does not have. Mayor Reeves stated that he is also concerned about what the general public thinks about this issue.

Councillor Born stated that she has to leave briefly but will return to hear as much testimony as possible. She noted that on the one hand, consumers can regulate this matter on their own, by not smoking and not frequenting restaurants that allow smoking, but on the other this is a very serious public health problem. She has received three calls from wait staff in restaurants who did not feel comfortable coming to speak in favor of the ordinance because their employees are opposed, but wanted her to know that they would favor the proposed ordinance because they are bothered by the smoke at their workplace.

Councillor Duehay stated that he will reserve his comments until after the public testimony.

Vice Mayor Russell then opened the hearing to public testimony.

Jodie Auerbach, Porter Square, stated that she works at the Green Street Grill and that she believes this issue is about choice. Customers should be able to choose where they want to go. There are at least 107 restaurants that are smoke free. What happened in Brookline is terrifying; what happened in Beverly Hills is not relevant. She has not met one restaurant employee who wants smoking banned. Ms. Auerbach stated that she supports the rest of the ordinance; only the restaurant provisions are unfair.

Robert Cromwell, Boston, Youth and Peer Leadership Coordinator for CASPAR, discussed the work of CASPAR peer leaders in the schools. They worked on compliance checks in Cambridge and will describe their experiences. Young people are challenging adults to be more responsible.

Delia Linskey, 16 Prescott Street, a student at Cambridge Rindge and Latin School (CRLS), stated that this city is vast, restaurants and lounges are contained. People should not be allowed to smoke except in their own homes, for the sake of the future.

Sue Recinas, Harvard Street, student at CRLS, stated that nonsmokers lose their choices when smokers pollute their airspace. Store owners did not ask for identification from her and they should have to do so.

Paulina Morris, Newtowne Court, stated that she is 16 years old, and she was able to buy cigarettes anywhere that she went. She is upset that people are so worried about the money aspect when people are dying.

Christine Links, Matignon student, stated that she was born with asthma and bronchitis. Health is more important than money.

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Hope Jones, 8 Putnam Gardens, C.R.L.S. student, stated that high school students and young middle school students are able to purchase cigarettes, and they see older kids smoking and get addicted.

Albert Hines, Norfolk Street, C.R.L.S. student, stated that lives are more important than a few dollars.

Shalon Bailey, 370 Harvard Street, spoke in support of the ordinance.

Maureen Handlon Loddy, Appleton Street, School Nurse, said that she runs groups for kids to quit smoking. She stated that many of the effects of smoking are already evident in 16 year old kids. They have been smoking for years. The kids in her group feel like they can get cigarettes anywhere that they want them. Teenagers are idealists, and they respect consistency. Making it more difficult for kids to have access to cigarettes will buy more time for them to grow older without this addition.

Mayor Reeves asked for a description of the compliance checks.

Hope Jones stated that the kids went in teams of two and tried to purchase cigarettes. They went to restaurants and stores.

Mayor Reeves asked whether the vending machines lock out ordinance is being complied with.

Police Officer, Jean Murrell, Dare Program, stated that the kids had no trouble getting cigarettes from the machines.

Pat Anderson said that letters will go out this week, with warnings to those who failed the test and congratulations to those who passed. This test is the baseline. There were notices in the papers six weeks ago to warn that this would happen. She stated that one reason for having the permitting process is to enable better records. The machines have to be licensed by the State now but the state will not give out any information.

Mandy McKenna, Arlington, stated she is a graduate of C.R.L.S. and she is a smoker. Enforcement must start with tobacco companies and the home, not stores.

Harry Katis, owner of the Fishery Restaurant, 720 Massachusetts Avenue, stated that he appreciates the efforts of the drafters, but this must be a statewide effort. It would be a disaster to enact this law just in Cambridge. His restaurant is a 200 seat restaurant, with fifty seats for smoking.

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Sue Kuelzter, 19 Copley Street, owner of Grendal's, stated that she fears that this ordinance, with all its exceptions will become a huge bureaucracy. She described a family that came in with a child in a stroller and requested seating in the smoking section. She does not want to be in charge of people's personal habits.

Gail Enman, Executive Director CASPAR, read the written testimony of Beth Frasker, Director of CASPAR Education Program, who wrote in support of the proposed ordinance.

Councillor Sullivan asked about the exemption of CASPAR sites and other detox and psychiatric units. Dr. Chalfen stated that hospitals have tried to go smoke free, but there are some exceptions to that now, because some patients have left the hospital against medical advice because they wanted to smoke.

Gail Enman stated that today most professionals are trying to treat all additions at once. In the new shelter, smoking is prohibited and it has been a benefit to staff and guests.

Councillor Sullivan asked about group homes. Gail Enman said that smoking is not allowed in the homes, and the most complaints have been from employees not residents.

Councillor Sullivan asked whether the ordinance would apply to the jail. Mark Gottlieb stated that the Commissioner of Health and Hospitals is allowed to grant exceptions to health institutions, to allow the expertise of the medical community to make those decisions. He does not believe the ordinance prohibits smoking in the jail, this was not the intention of the drafters.

Birge Albright, Legal Counsel, City of Cambridge, stated that he does not believe jails are covered by the definition of public places in the ordinance.

Councillor Sullivan asked for a further examination of this issue by the Law Department.

Vice Mayor Russell asked that the Law Department also look at whether religious institutions would be covered by the ordinance.

Douglas Clifford, 94 Crescent Street, Auburndale, stated that he is the brother of John Clifford, owner of Green Street Grille, and that he is here on behalf of John Clifford to express opposition to this proposal and support for the current ordinance. The present ordinance works. The International Restaurants of Central Square are asking for a level playing field with other cities and towns.

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Michael Muehly, Executive Director of Commission for Persons with Disabilities and ADA coordinator for Cambridge, stated that people with heart disease that affects breathing are covered by the ADA, as are people with asthma. He has a spinal cord injury that results in reduced respiratory capacity. Under the ADA, restaurants that need to make reasonable accommodations to avoid discrimination against persons with these disabilities. This ordinance would provide such a reasonable accommodation.

Paul McGowan, 35 Lee Street, employee of Green Street Grille, spoke in opposition to the proposed ordinance. The current ordinance works.

Kate Dempsey submitted the written testimony of Jane Taylor, Director of Public Health Nursing in Cambridge in support of the proposed ordinance.

Aidan Scully, 57 Rockview Street, Allston, Acting General Manager of House of Blues, spoke in opposition to the provisions relating to restaurants as a person who works in a service industry.

Gail Enman, Executive Director, CASPAR, read a letter from a resident of CASPAR who stated support of the proposed ordinance. Tobacco is a gateway drug, particularly with teenagers.

Marian Burns, 305 Broadway, stated that she runs the bingo game at St. Johns, and most of the people who come smoke. She is requesting an exception for the church bingo games which provides money for the school. She said that there is a nonsmoking area, and their patrons seem satisfied.

Vice Mayor Russell asked whether bingo games will be excepted. Mark Gottlieb said that under the proposed draft, there is no exception for bingo games.

Vice Mayor Russell noted that the current ordinance exempts the bowling alley.

Mark Gottlieb stated that right now there are no smoke free lanes at the bowling alley, and bowling is an activity that children and youth are drawn too. He added that he believes there is room for compromise regarding the bowling alley.

Marjorie Jacobs, 11 Tremont Street, stated that she works at the Community Learning Center. She spoke in support of the proposed ordinance and provided facts about the severe health dangers of smoking.

Joseph Kovacks, owner Shea's Beer and Wine Bar, Harvard Square, spoke in opposition to the proposed ordinance.

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Jack Vondras, Washington Street, Director, Cambridge Substance Abuse Task Force, read a letter in support of the proposed ordinance.

Michael Quirk, Somerville, spoke in opposition to the proposed ordinance. Yesterday, he attended the funeral of a friend who died from lung cancer, but this friend would not have wanted this ordinance.

Seth Yardin, 1654 Mass. Avenue, spoke in support of the proposed ordinance. He stated that the so-called letters are form letters; the petitions are misleading. There were 16 letters from one person and more than 2/3 are signed by non-Cambridge residents. One hundred twenty are duplicates. There are only 224, about 13%, that are Cambridge residents.

Bruce Polter, Mass. Restaurant Association; spoke in opposition to the proposed ordinance. He stated that cities and towns that have enacted bans are now reversing them. He also questioned whether since a restaurant is also a workplace, the workplace provision of the ordinance supersedes to prohibit all smoking.

Councillor Duehay noted that the Restaurant Association was opposed to the present ordinance when it was adopted.

Gail Enman read the testimony of Nancy Ryan, Director of the Women's Commission.

Peter Smith, owner of the Druid, Inman Square, spoke in opposition to the proposed ordinance. He noted the possibility of losing business to surrounding towns and cities.

Dr. Joseph Travis, 51 Fulkerson Street, member of Cambridge Health Policy Board, read a letter from the board in support of the proposed ordinance.

Joseph Sater, 472 Massachusetts Avenue, Middle East Restaurant, spoke in opposition to the proposed ordinance.

Stephen Helfer, 34 Hancock Street, stated that he worked on the petition drive, and all of the petitions he submitted were bonafide. He believes the health risks of smoking are exaggerated. The Japanese smoke more than Americans and do not have a history of a high number of deaths from lung cancer.

Priscilla Elliot, 142 White Street, Belmont, stated that she is a respiratory therapist who has seen the results of decades of smoking. It seems to her that much of the argument is economic. There are greater considerations, and in addition, on the other side of the economic balance are the costs of the health impacts.

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William Jones, Norfolk Street, stated that the Mayor is here in the building. Smokers should have freedom too.

Arvila Saracen, 15 Lambert Street, spoke in support of the proposed ordinance. She also wants no smoking signs posted in elevators and common areas of senior housing.

Dr. Chalfen said that Inspectional Services Department can enforce the state law regarding no smoking in elevators.

Joanna Malenfant, 75 Henry Street, spoke in support of the proposed ordinance. She went to C.R.L.S. and while she was there many classmates began smoking. This ordinance will help cut back on smoking by minors. There are some restaurants and bars that she will not go into because of the smoke.

Grenville Byford, 274 Dudley Street, Brookline, owner of the John Harvard Brew House, and a member of Liquor Advisory Board, spoke in support of the proposed ordinance. He suggested a preamble to the ordinance declaring its intention to refrain from further restrictions on smoking for five years. He also said that the restaurant owners are not comfortable with the limitation of smoking seats to 15% in the second year. He added that the restaurant community in general would be willing to accept 50% instead of 30%, although personally he does not have a problem with the 30%.

Elizabeth VanRanst, 15 A Ware Street, spoke in support of the proposed ordinance, even though there are parts that she is not pleased with.

Edward Sweda, Tobacco Control Program, State Department of Health, said that there is a bill, Senate Bill 518, to ban smoking in restaurants statewide. The Massachusetts Restaurant Association does not support this bill. Their main lobbyist is also the lobbyist for R. J. Reynolds. He urged support for the proposed ordinance.

Renee Foster, 23 Ellsworth Street, spoke in support of the proposed ordinance as a former waitress who had to quit her job because of the tobacco smoke.

Mary Wong, 51 Inman Street, Director of the Kid's Council, spoke in support of the proposed ordinance from the point of view of the effect of secondhand smoke on children.

Joel Peters, 21A Walden Street, stated that the Japanese are experiencing the same effects of tobacco as in America. The data cited by a previous speaker.

Deesha Goodwin, 175 Chestnut Street, read a resolution sent by the Graham and Parks Parents Committee in support of the proposed ordinance.

Councillor Duehay moved that the matter be referred to the full City Council.

Mayor Reeves submitted a proposed amendment, which he stated had been given to him for submission to the committee (Attachment B).

Councillor Sullivan said that he would like the matter to remain in committee while the issues raised at this hearing, including the questions of the jail, veteran's space, bingo games, the bowling alley, what the penalty covers and religious exemptions, are addressed.

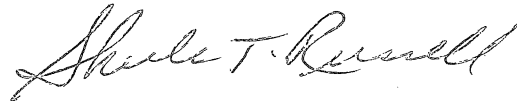
It was agreed without objection that the matter will remain in committee and that the next meeting on this issue will take place on April 25, 1995.

Mayor Reeves suggested that the drafters try to come to a win/win solution.

Vice Mayor Russell stated that since there was extensive public comment at this hearing, there will not be public comment at the April 25th meeting.

Councillor Born moved adjournment, and the hearing was adjourned upon a voice vote at 10:04 p.m.

For the Committee

A handwritten signature in cursive script that reads "Sheila T. Russell".

Vice Mayor Sheila T. Russell, Chair

2.

COMMITTEE REPORTS

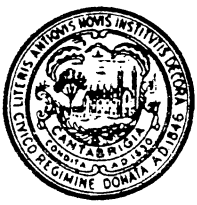
Ordinance Committee Report regarding a public hearing held on March 29, 1995 for the purpose of considering proposed amendments to the Smoking Ordinance.

In City Council,

April 10, 1995

*Report Accepted*  
*Placed on file*

16.



CITY OF CAMBRIDGE  
CAMBRIDGE, MASSACHUSETTS 02139

TEL 349-4300  
FAX 349-4307

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

RICHARD C. ROSSI  
Deputy City Manager

February 27, 1995

To The Honorable, The City Council:

Please find attached for your review and consideration proposed amendments to the Smoking Ordinance. This Ordinance was developed through a collaborative process involving: Cambridge United for Smoking Prevention (CUSP), a coalition of community groups, resident and City employees concerned about tobacco use; the Department of Health and Hospitals, Inspectional Services, License Commission and Consumer Advisory Council; the Cambridge Liquor Advisory Board, which includes representatives of the hospitality industry; and the Massachusetts Department of Public Health.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", written over a horizontal line.

Robert W. Healy  
City Manager

RWH/mev  
attachment

# SUMMARY OF PROPOSED CAMBRIDGE SMOKING ORDINANCE

for more information please contact Cambridge United for Smoking Prevention, 349-6344

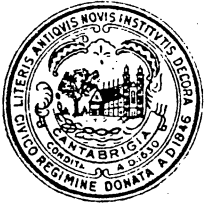
## I. Purpose: to decrease youth access to tobacco

1. Requires all tobacco vendors to purchase a permit from the City of Cambridge;
2. Requires all tobacco vendors to see proof of age before sale of tobacco;
3. Prohibits the free distribution of tobacco products;
4. Prohibits the sale of single cigarettes, "loosies";
5. Requires all tobacco to be kept behind the counter, prohibits self-service displays;
6. Requires all vending machines to be equipped with a "lock-out" device; and
7. Children will not be seated in smoking sections.

## II. Purpose: to reduce the amount of environmental tobacco smoke in public spaces

1. Prohibits smoking in the workplace, except when smoking lounge is separately ventilated;
2. Prohibits smoking in any indoor public space, except restaurants;
3. Prohibits smoking in taxicabs while passengers are being transported; and
4. Reduces smoking sections in many restaurants (see below):

Restaurant Type	Maximum Amount of Smoking Seats Permitted	
Restaurants without Liquor License	Restrictions in Year One	Restrictions in Year Two and on
With 20 seats or less	No Smoking	No Smoking
With more than 20 Seats	30%	15%
Restaurants with Liquor License	Restrictions in Year One	Restrictions in Year Two and on
Dining only (no bar area) with 20 seats or less	No Smoking	No Smoking
Dining only (no bar area) with more than 20 seats	30%	15%
Exemptions (must file for exemption)	Restrictions in Year One	Restrictions in Year Two and on
Dining room with bar/ lounge area greater than 30% but less than 50%	Smoking allowed in bar/ lounge area only	Same (Smoking allowed in bar/ lounge area only)
Dining room with bar/lounge area which is less than 30% capacity	Can add smoking seats in dining room	Can smoke in bar/Lounge area only
Dining Room with Bar Lounge where format changes to bar/club after 4pm or 10pm	Smoking area can change with category change	Same (Smoking area can change with category change)
Bar, lounge, or club with less than 75 seats	Smoking Allowed	Same (Smoking Allowed)
Bar, lounge, or club with 75 to 100 seats	75% smoking	Same (75% smoking)
Bar, lounge, or club with more than 100 seats	50% smoking/non-smoking	50% smoking/non-smoking



# City of Cambridge

DRAFT--February 22, 1995

In the Year One Thousand, Nine Hundred

## AN ORDINANCE

In amendment to an ordinance entitled the "Cambridge Municipal Code"

*Be it ordained by the City Council of the City of Cambridge as follows:*

WHEREAS, evidence demonstrates that tobacco is extremely addictive;  
and

WHEREAS, 18 is the legal age to purchase cigarettes in the Commonwealth; and

WHEREAS, 1992 election returns demonstrate that more than 69% of the Cambridge residents who voted favored Question One seeking to raise the state excise tax on cigarettes and create a Health Protection Fund to advance the goals of tobacco control; and

WHEREAS, 90% of all smokers begin smoking as teenagers; and

WHEREAS, compliance checks in Cambridge have to date demonstrated that minors were able to purchase cigarettes in ten of eleven stores visited; and

WHEREAS, the Surgeon General of the United States found in her 1994 Report that community-wide efforts including enforcement of minors access laws are effective at reducing adolescent use of tobacco;  
and

WHEREAS, this data indicates that there is a significant health

illegal access to tobacco; and

WHEREAS, the US Environmental Protection Agency (EPA) has determined that environmental tobacco smoke is a Class A known human carcinogen and major source of indoor air pollution putting all members of the population at increased health risk; and

WHEREAS, nonsmokers with allergies, respiratory disease and those who suffer other of the ill effects of passive smoking may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to environmental tobacco smoke; and

WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, cardiovascular diseases, negative birth outcomes, allergic reactions, and irritations to the eyes, nose, and throat to both the smoker and otherwise healthy nonsmoker exposed to secondhand smoke; and

WHEREAS, the Surgeon General of the United States found in his 1986 Report that the simple separation of smokers and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to environmental tobacco smoke; and

WHEREAS, the goal of the Commissioner of Health and Hospitals is to enable the people of Cambridge to breathe healthy, safe, smoke-free air in all indoor public places, including restaurants; and

WHEREAS, Courts interpreting the Americans with Disabilities Act, which requires access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a disability.

Therefore, for the above reasons, the City Council of the City of Cambridge ordains as follows:

Chapter 8.28 of the Cambridge Municipal Code, entitled "Smoking," is hereby repealed and replaced by the following new Chapter 8.28:

CHAPTER 8.28

Restrictions on Youth Access to  
Tobacco Products and on Smoking in  
Workplaces and Public Places

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions
- 8.28.030 Access of Minors to Tobacco Products
- 8.28.040 Prohibition of Smoking in the Workplace
- 8.28.050 Restrictions on Smoking in Public Places
- 8.28.060 Restrictions on Smoking in Restaurants, Bars and Lounges
- 8.28.070 Implementation
- 8.28.080 Enforcement and Penalties
- 8.28.090 Severability

8.28.010 Declaration of Legislative Findings

The City Council finds and declares that the purposes of this Chapter are to protect public health, safety and general welfare by:

- a) preventing access to tobacco products by minors;
- b) creating a permitting process for tobacco sales to facilitate enforcement of this Chapter;
- c) prohibiting smoking in workplaces and most other public places; and
- d) creating an atmosphere which promotes smoke-free restaurants and strives towards the long-term goal of smoke-free dining throughout Cambridge.

The City Council also is aware of the diversity of the City's residents and our reputation as an international city hosting many foreign dignitaries, business people and other visitors from countries where smoking is more prevalent than it is here. Accordingly, the City Council recognizes that courtesy and hospitality should not be compromised in the implementation and enforcement of this Chapter.

8.28.020            Definitions

Advisory Committee: a review committee established for this Chapter to mediate disputes over exemption requests that is composed of the Executive Secretary of the License Commission or his designee, the Commissioner of Inspectional Services or his designee, two common victualer license holders appointed by the Cambridge Liquor Advisory Board, and one Cambridge resident appointed by Cambridge United for Smoking Prevention (CUSP).

Bar, Lounge or Club: a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent (50%) of net revenue comes from food sales.

Cambridge Liquor Advisory Board: representatives of restaurants, private clubs and hotels who have liquor licenses that meet periodically with the License Commission and the Cambridge Substance Abuse Task Force to address the responsibilities of serving alcoholic beverages and related problems that can occur.

Cambridge United for Smoking Prevention (CUSP): a community-based program of the Cambridge Substance Abuse Task Force in coalition

with the Department of Health and Hospitals, Department of Human Services, School Department, CASPAR, and individual community members.

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

Common Victualer: a holder of a license under G.L. c. 140 who serves food for consumption on the premises or serves food for customers to carry out. A common victualer license holder (licensee) could also have a license to serve alcohol with food.

Employee: any individual who performs services for an employer in return for wages or profit, or any individual who volunteers his or her services for a non-profit entity.

Employer: any person, including the City of Cambridge or any agency or department thereof, which regularly uses the services of two or more employees.

Enclosed area: a space bounded by walls and under a roof.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

License Commission: the Cambridge License Commission, as established by St. 1922, c. 95.

Lounge or Bar Area: an area of a restaurant where the primary focus of the business is the service of alcoholic beverages rather than food, although full food service may be available in this

area. The type of seating, barriers separating this area from the primary dining areas, and the arrangement of serving stations can help to further determine if this is to be considered a lounge or bar area.

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

Minor: any person under eighteen (18) years of age.

Non-smoking Area: all areas within a public place where smoking is prohibited.

Occupancy Number: the number of persons who may occupy a restaurant, as determined by the License Commission. The number, in certain cases, may include both standing and seated patrons.

Person: shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

Public Place: an enclosed indoor area where the public is invited or permitted, including but not limited to the following facilities: licensed childcare locations; educational facilities; malls; public restrooms; waiting rooms; elevators accessible to the public; hospitals, clinics and nursing homes; inn, hotel and motel lobbies, stairwells, halls, entranceways, and restrooms; common rooms in publicly-assisted housing; laundromats; libraries; schools; municipal buildings; museums; retail stores; retail food establishments; indoor sports arenas; taxis and other public transit facilities; theaters and concert halls; auditoriums and any rooms or halls when used for public meetings; public areas of a

bank and automatic banking lobbies. A room or hall used for a private social function in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements shall not be construed as a public place.

Restaurant: a space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualer under the provisions of G.L. c. 140. In addition, the person could hold a beer and wine or all alcohol pouring license. For the purposes of this Chapter the restaurant could be re-defined as a bar, lounge, or club after 4:00 or 10:00 p.m.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption.

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

Self-service Display: a tobacco products display from which individual packets, containers or cartons of tobacco products may be selected and grasped by customers and where distribution of such products is not directly controlled by an employee.

Smoking: the lighting of any cigar, cigarette, pipe or other tobacco product, or having possession of any lighted cigar, cigarette, pipe, or other tobacco product.

Smoking Area: the area or areas within a public place where smoke is vented directly to the exterior of the building. A restaurant

is not required to meet this ventilation provision, but must locate the smoking area so as to minimize the migration of tobacco smoke into the non-smoking area. All designated smoking areas must be so posted and are the only areas where smoking is permitted.

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

Workplace: any area within a structure or portion thereof at which one or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways, and entranceways.

#### 8.28.030 Access of Minors to Tobacco Products

(1) Tobacco Sales Permit Required. No person shall sell tobacco products within the City of Cambridge without a tobacco sales permit issued by the Inspectional Services Department. As part of the application process, the applicant will be provided with the following:

- instructions on compliance with G.L. c. 270, §6, (sales of tobacco to minors and penalties for violation thereof) and this Chapter; and
- a statement that the applicant will be required to sign 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.

The fee for this permit is to be determined by the Inspectional Services Department. A permit must be obtained for

each business location where tobacco products are sold and will be renewed by July 1 of each successive year. The permit will be valid for July 1 through June 30. The permit must be prominently posted at the point of sale.

(2) Sales to Minors. Prior to purchase, proof of age in the form of a driver's license or other legitimate photographic identification card which shows the date of birth is required of all persons who appear, to a reasonable person, close to or below the legal age for the purchase of tobacco products. In conformance with G.L. c. 270, §6, no merchant shall sell a cigarette, chewing tobacco, snuff, or any tobacco in any form to any person under the age of eighteen or, not being the minor's parent or guardian, no person shall give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen.

(3) Free Distribution/Sampling. No person shall, in or upon any part of the streets, parks, public grounds, public buildings, or other publicly-owned places within the City of Cambridge, distribute free of charge any products containing tobacco, or any coupons or vouchers for free or reduced-priced tobacco products, to any person for any promotional or other commercial purposes.

(4) Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited.

(5) Self-service Displays. All free-standing, self-service displays of tobacco products are prohibited. All cigarettes and chewing tobacco must be kept behind a counter at the cash register

from which they are sold, or in locked display cases.

8.28.040            Prohibition of Smoking In The Workplace

(1) With the exception of restaurants and bars which are covered under Section 8.28.060 of this Chapter, no person shall smoke or allow smoking in any room, under the control of a public or private employer, which employees normally frequent during the course of employment, including but not limited to: work areas, employee lounges and restrooms, conference rooms, and hallways, but not including any private residences unless used as childcare or healthcare facilities.

(2) Exceptions. At the written request of one or more employees, an employer may (but is not required to) provide reasonable accommodations to smoking employees so long as no nonsmoking employees must come into contact with tobacco smoke in the workplace. Such written request shall be retained by the employer and, upon request by the Department of Health and Hospitals, shall be filed with the Commissioner. A separate employee lounge used exclusively for smoking, such that employees need not enter for any other purpose, may be provided so long as the lounge is sealed, vented to the outside, and does not contain vents capable of re-circulating smoke throughout work areas.

If a smoking lounge is provided by the employer, a smoke-free lounge with at least as much floor space must also be provided. Upon request in writing, an employer shall provide a copy in writing of its smoking policy including any designated smoking area or other accommodation for the smoking employees, to any employee,

prospective employee, and the Commissioner or his designee. Any employee aggrieved by an employer's smoking policy or any portion thereof may appeal in writing to the Commissioner, who may modify it in any reasonable manner necessary to carry out the purposes of this Chapter. In any dispute arising from such a smoking policy, the reasonable health concerns of non-smokers shall be given precedence.

8.28.050        Restrictions on Smoking in Public Places

(1) No person shall smoke in any indoor public place in Cambridge, except in areas specifically designated to permit smoking. Hallways, entranceways, stairwells, waiting areas, restrooms, elevators, as well as any places in which smoking is prohibited by the State Fire Marshall, the Massachusetts Department of Public Health or other Federal, State, or local agencies, shall not be designated as areas where smoking is permitted.

Nothing in this Chapter shall be construed to require the creation of smoking areas.

(2) Retail Stores. No person shall smoke in any retail store. Smoking areas may be designated in an area of the store which is not open to the general public in accordance with the provisions of Section 8.28.040 of this Chapter.

(3) Designated smoking areas in hospitals, etc. Smoking areas may be designated in hospitals, clinics, nursing homes, long term care facilities and rooms where medical or psychiatric support groups meet if the Commissioner or his designee determines that compliance with this Chapter would frustrate the purpose of those groups

and/or facilities. A person seeking such designation must apply in writing to the Commissioner.

(4) Taxis. No Taxi and limousine/livery service licensed by the City of Cambridge may permit smoking in vehicles, whenever passengers are being transported, as of April 1, 1996. The restriction of smoking in taxi/limousine/livery vehicles applies to drivers as well as passengers and all such vehicles will be posted with a decal stating "No Smoking Permitted by Cambridge Municipal Code, Chapter 8.28."

(5) Exceptions. Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of sections 8.28.040 and 8.28.050:

- (a) Retail stores where the primary business is the sale of tobacco products;
- (b) Private residences and university dormitories;
- (c) Bed and Breakfast, hotel, and motel rooms rented to guests;
- (d) Hotel and motel conference/meeting rooms, and private assembly rooms while these places are being used for private functions provided that ventilation from these areas is not re-circulated to or mixed with makeup air supplying other non-smoking areas within the building;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production.

8.28.060 Restrictions on Smoking in Restaurants,  
Bars and Lounges

1. General Restrictions

(a) A restaurant with an occupancy number of twenty (20) or less shall be a smoke-free eating establishment. Any restaurant with a larger capacity must restrict smoking to an area comprised of no larger than 30% of its approved occupancy number beginning ninety (90) days after this Chapter's enactment date.

(b) The permitted smoking area shall be reduced to 15% of the occupancy number in any establishment with a permitted smoking area one year after the 30% limit commenced.

(c) Exemptions from the 30% and 15% requirements of this Chapter shall be granted by the Commissioner or his designee if the applicant meets the criteria and follows the procedures set forth below.

(d) The common victualer license holder (licensee) shall designate the smoking area, and if such area is approved by the Commissioner, shall be the person responsible for ensuring that all requirements contained in this Chapter are followed.

(e) Minors between 12 and 18 years of age will not be seated in a smoking area unless accompanied by a parent or guardian. Parties with children under the age of 12 will not be seated in a smoking area. The good faith determination of the licensee or his designee will be used to enforce this requirement.

(f) Although no smoking restrictions will be imposed by this Chapter on the occupants of private function rooms, it shall be required that all these rooms have a sign warning of the health

effects of second hand smoke posted in a clear and conspicuous manner. The owner or manager of the function room shall make a good faith effort to offer to set up for the renter of the room a non-smoking/smoking division of the room if the renter so wishes.

2. Exemptions. An exemption from the smoking limitation shall be granted to a restaurant with a liquor license if the application for such an exemption is approved after meeting the requirements set forth below in this Chapter. Restaurants without liquor licenses or those with seating for dining only will not be permitted an exemption from the above smoking restrictions.

A. Application Procedure for an Exemption.

(1) A written request for an exemption to the Commissioner must be made setting forth the occupancy number approved by the License Commission and a statement of the category the licensee believes is appropriate for this licensed establishment, namely, a restaurant with a lounge or bar area or a restaurant that is a bar, lounge, or club or other category as further provided for in this Chapter. A floor plan(s) indicating the proposed smoking area(s) must also accompany the exemption request. The Commissioner or his designee may attach conditions to the exemption.

In exceptional circumstances, where a restaurant licensee does not fit any of the categories as defined and described in this Chapter, the Commissioner or his designee is empowered to make a determination as to what level of smoking should be permitted to fit the spirit of this Chapter.

(2) If the Commissioner or his designee does not believe the

exemption request should be approved as submitted, the applicant will be contacted to discuss specific concerns so that approval may be obtained. If this informal method does not gain an approval, the Commissioner or his designee will issue a denial of the exemption request in writing setting forth his objections. The applicant will also be informed of the right to appeal this denial.

B. Lounge or Bar Area Exemption. A restaurant that has a dining room(s) and also has a lounge or bar area may request that this area be fully exempted from smoking restrictions in the exemption request. If the lounge or bar area holds 30% or more of the overall occupancy number but less than 50% of this number, then no additional smoking area will be permitted in the dining room(s). If the lounge or bar area holds less than 30% of the overall occupancy number, then an additional designated smoking area can also be placed in the dining room to achieve the 30% maximum of this number. One year after the exemption is granted, the additional smoking area in the dining room must be eliminated. The entire lounge or bar area may remain as a smoking area.

C. Bar, Lounge, or Club Exemption.

(1) A restaurant that meets the definition of a bar, lounge, or club and has an occupancy number of less than 75 can be granted a full exemption from the requirements of this Chapter. A floor plan is not needed with such an exemption request.

(2) A restaurant that meets the definition of a bar, lounge, or club and has an occupancy number between 75 and 100, may request an exemption but a 25% non-smoking area will be required. A floor

plan indicating this 25% non-smoking area must be submitted.

(3) A restaurant that meets the definition of a bar, lounge, or club and has an occupancy number of over 100 may request an exemption that would establish a 50/50% smoking to non-smoking ratio. A floor plan must be submitted.

One year after this Chapter has been in effect, a bar, lounge or club with an occupancy number over 100 must re-submit a request to continue its exemption if it does not choose to voluntarily reduce its smoking area below 50% of the total capacity.

(4) If the occupancy number includes standing patrons, the licensee has a good faith duty to maintain compliance by separating the patrons between the posted smoking and non-smoking areas.

D. Special Requirements.

(1) The licensee may set forth any floor plan arrangement that is workable for the premises as long as the prescribed percentages are followed. Clear and conspicuous signage indicating the smoking and non-smoking areas must be present. Although this Chapter does not require separate enclosed areas with direct venting to the outside for the smoking areas in restaurants, it is expected that the division of space used will minimize the intrusion of second-hand smoke into the non-smoking area.

(2) A restaurant with a lounge or bar area can claim to be redefined after either 4:00pm or 10:00PM as a bar, lounge or club. It can request an exemption allowing a 50/50% smoking to non-smoking ratio after the 4:00PM or 10:00PM transition. A secondary

floor plan must also be submitted indicating any changes in the altered arrangement for the designated smoking area after 4:00PM or 10:00PM.

(3) There are establishments that contain separate rooms, floors, or distinct areas wherein a different format, marketing approach, separate entry fee, name or character distinguishes one part of the licensed premises from another. These licensees may request the Commissioner or his designee to treat each room as a separate licensed entity for the purpose of this Chapter, and seek either a temporary or ongoing exemption accordingly.

E. Further requirements.

(1) A warning sign, in a format approved by the Commissioner or his designee, about the adverse health effects of tobacco smoke must be prominently posted in all restaurants with designated smoking areas.

(2) A copy of the exemption request, floor plan, and written approval from the Commissioner or his designee will be forwarded to the License Commission to be part of the licensing file for the restaurant.

F. Appeals Process.

(1) An appeal of a denial of an exemption must be made in writing within ten calendar days of the receipt of the denial letter. The written appeal should be addressed to the Commissioner or his designee and a copy sent to the License Commission. The appeal request should state why the appellant believes the decision of the Commissioner or his designee was arbitrary, capricious,

biased or not based on substantial evidence, and why the applicant believes the exemption request meets the criteria set forth in this Chapter.

(2) Within thirty calendar days of the receipt of the appeal, an informal review will occur and provide all parties with an opportunity to be heard and to try to resolve the dispute. The appellant and the Commissioner or his designee will present their positions before the Advisory Committee. The Advisory Committee will analyze the claims presented based on the language of this Chapter, and propose a mediated resolution. The appellant may be represented by legal counsel.

(3) If the dispute cannot be resolved during this informal review by the Advisory Committee, the Executive Secretary of the License Commission will proceed to schedule a formal appeal before the full License Commission. Said appeal hearing will be heard within 30 days of the Advisory Committee's informal review.

G. Complaints of Non-Compliance. Complaints shall be first brought to the attention of the Commissioner or his designee for investigation and resolution. Complaints may be submitted by members of the general public or by inspectors or investigators of the various city departments and agencies charged with the enforcement of this Chapter. The Commissioner or his designee may request that the License Commission investigate the complaint if informal compliance cannot be achieved.

8.28.070 Implementation

1. It shall be incumbent on every person having control of

places covered by this Chapter, or his designee, to prevent smoking except in designated smoking areas as set forth in this Chapter by:

a) Conspicuously posting a sign at each entrance to the public place indicating that smoking is prohibited therein except in specifically designated areas.

b) Conspicuously posting "Smoking" and "No Smoking" signs, or the international "No Smoking" symbols (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) in every area where smoking is prohibited or permitted by this Chapter.

c) Arranging seating so that physical barriers, ventilation systems, and available space are utilized to reduce the exposure to smoke of persons outside the area(s) where smoking is permitted to the greatest extent possible.

d) Requiring patrons or other invitees who may be smoking in areas where smoking is prohibited, to either relocate to an area where smoking is permitted, or if such an area has not been designated, to immediately extinguish all smoking materials and refrain from smoking while within the subject public place.

e) Using any additional appropriate and reasonable means to ensure compliance with this Chapter.

2. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter.

8.28.080 Enforcement and Penalties

A. Criminal Penalties

Any person who violates any provision of this Chapter, or who

smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, shall be fined in an amount of not less than \$50 nor more than \$300. Each day's violation shall constitute a separate offense.

B. Noncriminal Disposition

Any person who violates any provision of this Chapter, or who smokes in an area in which a "No Smoking" sign is conspicuously and properly posted as required in §8.28.070, may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission and the Health and Hospitals and Inspectional Services Departments or their designees. The penalty for each violation of §8.28.030 shall be \$50, and for each violation of any other section shall be \$25. Each day's violation shall constitute a separate offense.

C. Suspension of Revocation of Permit or License

(1) Tobacco Sales Permit

As an additional penalty, the Commissioner of Inspectional Services may suspend the tobacco sales permit of any person who violates any provision of §8.28.030 three or more times in any 12 month period. Before such suspension, the violator may request a hearing before said Commissioner or his designee. Such suspension shall not exceed 90 days.

(2) Common Victualer and Liquor Licenses

It shall be unlawful for any person having control of any premises or place in which smoking is prohibited by this Chapter to

knowingly permit an infraction of this Chapter. A person shall be held to have committed a violation if an enforcing officer on the premises observes one or more persons smoking (other than in properly designated smoking areas) on any three visits within a 12 month period. If such person has a common victualer or liquor license issued by the License Commission, such license or licenses shall be subject to suspension or revocation. The License Commission, after a hearing, may suspend such license or licenses for up to fifteen days for a single violation, for up to one year for two violations within a 12 month period, and may revoke such license or licenses for three or more violations within a 12 month period.

D. Injunctive Relief

The Commissioner or any person aggrieved by any violation of this Chapter may apply to the Superior Court for injunctive relief.

8.28.090 Severability

If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

## City of Cambridge

The Ordinance Committee conducted a public hearing on Thursday, May 18, 1995 beginning at 4:48 p.m. in the Sullivan Chamber, City Hall.

Vice Mayor Sheila T. Russell, Chair of the above referenced committee, convened the hearing and stated that the purpose of this date's proceedings was to discuss the draft ordinance in Chapter 8.28 entitled "**Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places**" dated April 26, 1995 and amendments offered by the Cambridge Chamber of Commerce. Present at the hearing were: Mayor Kenneth E. Reeves, Councillors Kathleen L. Born, Francis H. Duehay, Anthony D. Galluccio, Michael A. Sullivan and Deputy City Clerk John E. Flynn.

To begin the discussion, Vice Mayor Russell recognized Councillor Duehay for his remarks.

Councillor Duehay stated that the proposed restrictions, overall were in the best interest of the public at large. He stated that his position favors the restrictions and the reduction of second hand smoke. He also stated that he would not support any amendment weaker than the CUSP Ordinance. He noted that smoking contributes to death and disease and could not in good conscience be prepared to accept any compromise. He also stated that he was not pleased with the attempts to weaken the proposed CUSP Ordinance, not pleased with the activities of the tobacco lobby and not pleased with the activities of the Chamber of Commerce. In conclusion, he stated that he would support the original amendment to the Municipal Code as offered by CUSP.

Councillor Sullivan acknowledged that the issue poised a difficult decision. He stated that he had not been lobbied by the Tobacco Industry but had heard from small restaurant owners and bar owners. He also stated that the amendments being offered are moving away from the present ordinance. He called the proposed amendments as sound, they do not gut but have toughened up the existing ordinance. On the issue of youth access, the amendments address them. He also stated that the appropriate battleground on the smoking issue is on the federal and state levels.

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Mayor Reeves stated that he had two positions on the issue: (1) Content with the present ordinance - noting that the issue was broader than a Cambridge issue. He commented on the fact that in Sweden where higher regulations exist that it did not curb behavior. He also stated that smokers do have rights and that the Council has to allow for a balance of a choice; (2) Support for the proposed child access restrictions. He further stated that the issue at hand, given the activities of some, had gone from the ridiculous to the sublime citing E-Mail messages and his voting with a certain group.

Councillor Duehay noted his agreement with Councillor Sullivan and Mayor Reeves that the issue has to be discussed on the federal and state level, but believed that the issue will be settled in a short time. He stated that evidence has demonstrated that second hand smoke is harmful but the amount of money being spent on lobbying is retarding legislation. He also stated that shortly the Center for Disease Control in Atlanta will issue a report of a study in Westlake Texas where smoke free restaurants and other public places has not affected the business or economic development climate of the community. He further stated that he was gambling with private business concerns but was willing to do it because of his concern with the health of others.

Councillor Born stated that when she began looking at the issue - she focused on the affects on small businesses and the effects as a health issue. She further stated that she received information from proponents and opponents and that from reading the daily newspapers, decided that the need exists to further restrict. She noted that Cambridge has a history of being in the forefront of issues but is lagging in this issue. She stated her support for the CUSP proposed ordinance.

Vice Mayor Russell stated although she is a non-smoker, is sympathetic to the small restaurant and bar owners and will support the proposed amendments.

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At this time, Mayor Reeves suggested that the Committee review the amendments being offered by Vice Mayor Russell, Councillor Sullivan and Councillor Galluccio.

Upon review of the proposed amendments, Vice Mayor Russell requested the Law Department to review as approved to form.

The hearing was adjourned at 5:45 p.m.

For the Committee,

A handwritten signature in cursive script that reads "Sheila T. Russell". The signature is written in dark ink and is positioned above the printed name.

Vice Mayor Sheila T. Russell  
Chair

Committee Report #4

Comm. received from John E. Flynn transmitting a report from Vice Mayor Russell, Chair of the Ordinance Committee for a public hearing held on May 18, 1995 for the purpose of discussing the draft ordinance in Chapter 8.28 entitled "Restrictions on Youth Access to Tobacco Products and on Smoking in the Workplace and Public Places."

In City Council June 5, 1995

Report accepted. Referred  
to Unfinished business  
No. 18.

0-17 B

Smoking  
Ordinances