C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council _____, 199

Calendar Item # 21 Amended to include Attachment "B" in Report. & Mayor Duehay Amendments

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

MSSR/perfected

8 - 1 - 0

C. C. 106

City of Cambridge

MASSACHUSETTS

#7

In City Council June 21, 1999

Councillor Davis Amendment. "To provide For smoking Free restaurant.

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

2-7-0

C. C. 106

City of Cambridge

MASSACHUSETTS

Unfrs Brs
#21

In City Council June 21, 1999

HD delete 8.28.120 Sect C (3 B)

	YEA	NAY	ABSENT	PRESENT
Ms. Kathleen L. Born		✓		
Ms. Henrietta Davis	✓			
V. Mayor Anthony Galluccio	✓	✓		
Mr. Kenneth E. Reeves		✓		
Ms. Sheila T. Russell		✓		
Mr. Michael A. Sullivan		✓		
Mr. Timothy J. Toomey, Jr.		✓		
Ms. Katherine Triantafillou		✓		
Mayor Francis H. Duehay	✓			
	2	7	0	0

C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council June 21, 1999

Unfinished Bus
#21

On Ordinance of Smoking Ord Amds as amended

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

8 1

MS m sup 6/19
R fails 0-9

C. C. 106

City of Cambridge

MASSACHUSETTS

In City Council June 21, 1999

#21

HD amendment sent back 8.28.110 and 8.28.120

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

2 7 0 0

#3

COUNCILLOR DAVIS

Amendment presented to the City Council June 14, 1999

In Section 8.28.120 Section C subsection 3B

Delete 8.28.120 Section C (Exceptions) 3B and renumber

This deletes the section which permits smoking 6 feet from doors of no barrier

failed
3-7-0

#2

June 21, 1999

COUNCILLOR DAVIS

ORDERED: That Sections 8.28.110 and 8.28.120 of the presently proposed amendment to the Smoking Ordinance are hereby referred back to the Public Health Department without action; and be it further

ORDERED: That the City Manager be and hereby is requested to confer with the Chief Public Health Officer and the City Solicitor to provide the City Council at the earliest possible date with a substitute for the presently proposed amendments to Section 8.28.110 and Section 8.28.120 to provide for smoke free restaurants.

failed
3-7-0

ORDINANCE NO. 1225

Final Publication Number 2848. First Publication in the Chronicle on May 20, 1999.

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

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:

Amend Chapter 8.28 by deleting the present Chapter 8.28 and substituting a new Section 8.28 entitled "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places," as amended.

In City Council June 21, 1999.
Passed to be Ordained as amended by a yea and nay vote:-
Yeas 8; Nays 1; 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 Zoning 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.

DEATHS

Gertrude E. Alfeiri

Homemaker

Gertrude E. (McCallem) Alfeiri died May 5 at Youville Lifecare Center in Cambridge. She was 75.

Mrs. Alfeiri was born in Watertown and was a lifelong resident of Somerville. She worked as a homemaker, and was a past member of Women's Auxiliary Post 388.

She was the wife of the late Gerald "Chet" Alfeiri; mother of Geri Petrone of Somerville and Catherine Mamber of Swampscott; sister of June Miele of Cambridge, Thurl and Russell McCollem of Somerville, and the late Mildred Risola; and grandmother of Peter Correggio, Cheryl Courtney, Matthew Anctil, and Colleen and John Wilson.

A Funeral Mass was held May 8 at St. Benedict's Church in Somerville, with burial at Woodlawn Cemetery in Everett. Arrangements were made by the Doherty Funeral Home in Somerville.

Donations in Mrs. Alfeiri's memory may be made to the Children's Hospital Extended Care Center, 22 Hillside Ave., Groton, Mass., 01450.

Paul A. Allosso

Truck driver

Paul A. Allosso died May 3 at home in Waltham. He was 65.

Mr. Allosso was a former resident of Cambridge and Arlington. He was a veteran of the U.S. Navy and U.S. Air Force, and a member of American Legion Post 440 of Newton and Arlington Sons of Italy. He was a former truck driver with Jomar Distributors of Watertown.

He was the husband of Marie "Jackie" (Panaggio) Allosso; son of the late Salvatore and Mary (Gallo) Allosso, formerly of Somerville; father of Diane Johnston of Malden, Sandy Minichiello and her husband Arthur of Woburn, Joanne Hasbrock and her husband Jamie of Belchertown, Michael Murphy of Woburn, Daniel Murphy and his wife Kim of Woburn, and Michael and Paul Allosso, formerly of Cambridge; brother of Patrick and his wife Virginia of Somerville, Salvatore and his wife Patricia of California, and Nancy Souza and her husband Richard of Dracut; brother-in-law of Jerry Bowen and the late Leo Bowen of Newton; and grandfather of Jennifer, Michael, Christopher and Justin Murphy of Groton, Steven and Dawn Murphy and Kristin and Nicholas Minichiello of Woburn, and Aidan Hasbrock of Belchertown. He is also survived by several nieces and nephews.

A Funeral Mass was held May 7 at St. Mary's Church in Waltham, followed by a private burial. Arrangements were made by the Magni Funeral Home in Newton.

Donations in Mr. Allosso's memory may be made to Health Care Dimensions (Hospice), 254 South St., Waltham, Mass., 02454.

David Crooker Dow

Ex-medical examiner

David Crooker Dow, M.D., died May 2 at the Crestwood Harborside in Milford, N.H. He was 93.

Dr. Dow was born in Cambridge and lived the majority of his life in Harvard Square. He graduated from Harvard College in 1927 and Tufts College Medical School in 1931. After interning at the Worcester City Hospital, he opened his office in the general practice of medicine at 1587 Mass. Ave. He served on the staffs of Mt. Auburn, Symmes and Sancta Maria hospitals. He was appointed Middlesex County medical examiner for 45 years, a position he took over from his father, Dr. David C. Dow.

In 1942 Dr. Dow volunteered for the U.S. Naval Reserve where he served as attending physician aboard LST 60. Lt. Cmdr. Dow made 50 round trips across the English Channel in support of the Normandy Invasion. The LST 60 delivered troops and supplies to the beach and returned to Southampton with wounded and prisoners.

In 1953 he married Eunice Greta Eleanora Nelson. They traveled the world as passengers aboard the Queen Elizabeth II, taking numerous vacations in Europe and the South Pacific. They were married for many years living on Concord Avenue, and attended the First Church in Cambridge, Congregational, where Dr. Dow was a member since childhood.

Dr. Dow was a member and leader of many professional and civic organizations including the Cambridge Medical Improvement Society, Middlesex South District Medical Society, Massachusetts Medico-legal Society, Salvation Army Advisory Board, Economy Club, Cambridge YMCA, Cambridge Historical Society, Cambridge Rotary, Amicable Lodge A.F. and A.M., Harris Lodge No. 90 and the Boston Seaman's Friends Society.

He is survived by a sister, Margaret Mudge of New London, N.H., five nonagenarian cousins, and an extended family of friends and relatives.

A Memorial Service was held May 5 at First Church in Cambridge Congregational, and a Masonic Service by Amicable Lodge A.F. and A.M. was held May 11. Arrangements were made by the Watson Funeral home in Cambridge.

Francis M. Ford

Supervisor

Francis M. Ford died May 3 at Youville Lifecare Center in Cambridge after a brief illness. He was 76.

Mr. Ford was born in Cambridge, son of the late James and Catherine A. (Gilligan) Ford. He had been a resident of Billerica for the past 35 years, formerly of Somerville and Cambridge. He was an Army veteran of World War II where he served throughout Europe, and was retired from the city of Cambridge where he worked as a supervisor at the Cambridge Hospital for over 30 years.

He was the husband of Marguerite "Peg" (O'Connell) Ford; father of Stephen M. of Boston and the late selectman Paul F. Ford; and brother of James J. "Joe" of Cambridge, John W. "Wally" of Arlington, Thomas H. of Billerica, Rita I. Ford of Cambridge, and the late Ethel, Mary McCune, Elizabeth Trodden, Catherine McDermott and Edward Ford. He is also survived by many nieces and nephews.

A Mass of Christian Burial was held May 8 at St. Clement's Church in Somerville, with burial at Woodlawn Cemetery in Everett. Arrangements were made by the Doherty Funeral Home in Somerville.

Carmen M. Garcia

Senior Center volunteer

Carmen M. (Maldonado) Garcia died May 5 at home in Cambridge. She was 77.

A veteran mother, having raised seven children in the South Bronx, she offered her community a wealth of talent, experience and dedication. She worked with senior citizens and young children because both "were the most misunderstood people in the world." She never lost sight of her own rights. A wife at the age of 15, a widowed mother of four at 23 in Puerto Rico, an immigrant to an alien United States shortly thereafter.

Her first job was working in a sweatshop sewing American flags. She remarried and bore three more children. She took on other odd jobs, always struggling but also always, as she put it, "improving my mind" by taking courses at local high schools. She received an associate's degree from Hostos Community College in New York. She said about her experiences at Hostos, "I had the opportunity to get an education and I think everybody else should have the same opportunity, regardless of age."

"Carmen Garcia, one of New York City's greatest resources" came to live in Cambridge in 1995 where she continued her love for learning at UMass/Boston's Gerontology Program. She served the Cambridge community by her participation on the board of the Cambridge/Somerville Elder Link. She also worked as a volunteer at the North Cambridge Senior Center and established a Hispanic Elders group in Cambridge.

She was the wife of the late Roberto Garcia; mother of Julia Perez of Cambridge, Milagros Perez-Huth of New York City, Ismael Perez of New York City, Pedro Perez of Pennsylvania, Norma Garcia-Turner of Cambridge, Roberto Garcia of Connecticut, and Rudy Garcia of Cambridge; and sister of Josefa Jimenez of Puerto Rico and Julia Morales of Florida. She is also survived by 16 grandchildren and three great-grandchildren.

Funeral services were held May 8 in Christ Church in Cambridge, with burial at Mt. Auburn Cemetery in Cambridge. Arrangements were made by the Burns Funeral Home in Cambridge.

Donations in Mrs. Garcia's memory may be made to the American Cancer Society or St. Jude Children's Research Hospital.

Leo M. Grady

Post office employee

Leo M. Grady died May 6 at Mt. Auburn Hospital in Cambridge after a brief illness. He was 84.

Mr. Grady was born in Cambridge, son of the late Michael and Mary (Cuddihy) Grady, and was a resident for many years before moving to Somerville. He was a U.S. Army veteran of World War II, and was retired from the Central Square Post Office in Cambridge.

He was the brother of Katherine M. Corcoran and Josephine M. George of Somerville, and the late Francis and Joseph Grady and Doris Davidson. He is also survived by several nieces, nephews, grandnieces and grandnephews.

A Funeral Mass was held May 8 at St. Catherine's Church in Somerville, with burial at Cambridge Cemetery. Arrangements were made by the Hickey Funeral Home in Cambridge.

Lucy M. Healy

Bookkeeper

Lucy M. Healy died May 3 in Lexington after a lengthy illness. She was 90.

Ms. Healy was born in Boston, daughter of the late Patrick and Lucy (Sullivan) Healy, and was a resident of Belmont, formerly of Cambridge. She worked as a bookkeeper.

She was the sister of the late Mary Healy and the late John J. (Pat) Healy, retired from the Cambridge Police Department; and aunt of Geraldine Healy of Belmont.

A Funeral Mass was held May 6 at the Church of St. Luke in Belmont, with burial at Cambridge Cemetery.

Robert E. Hutchinson

Camp ranger

Robert E. Hutchinson died May 4 at Monadnock Community Hospital after a brief illness. He was 73.

Mr. Hutchinson was born in Waltham and was a resident of West Rindge, N.H., formerly of Framingham. He was a veteran of World War II with the U.S. Navy Seabees, and worked as a camp ranger for the Cambridge Boy Scouts, Camp Quinapoxet, N.H.

He was the brother of Richard, Doris Tymon, Lucy Morgan, and the late Charles and James Hutchinson. He is also survived by many nieces and nephews.

Visiting hours were held May 7 at the Rogers Funeral Home in Cambridge.

Donations in Mr. Hutchinson's memory may be made to Camp Quinapoxet, c/o Cambridge Boy Scouts, 2326 Mass. Ave., North Cambridge, Mass., 02140.

Edward F. Kelly

Mohawk Shade owner

Edward F. Kelly died May 6 at home in Arlington after a lengthy illness. He was 72.

Mr. Kelly was born in Cambridge, son of the late Stephen J. and Annie J. (Hutchins) Kelly, and was a 15-year resident of Arlington, formerly a longtime resident of Somerville. He was a U.S. Army veteran of World War II, the owner and president of Mohawk Shade Company in Cambridge, and a member of the Mystic Wellington Yacht Club.

He was the husband of Margaret (Goffredo) Kelly; and brother of June Scanlan of Illinois, Patricia Saisi of New Hampshire, and the late George Kelly. He is also survived by many nieces and nephews.

Graveside Services were held May 11 at Mt. Pleasant Cemetery in Arlington. Arrangements were made by the Keefe Funeral Home in Arlington.

Charles Kurlowecz

Longtime resident

Charles Kurlowecz died May 1.

Mr. Kurlowecz was a longtime resident of Cambridge. He served with the U.S. Army during World War II.

He was the husband of the late Isabelle (Doherty) Kurlowecz; father of Steven Kurlowecz; father-in-law of Deanna Kurlowecz; and grandfather of Tiea and Justin.

A Funeral Mass was held May 4 at Sacred Heart of Jesus Church in Cambridge, with burial at Holy Cross Cemetery in Malden. Arrangements were made by the Szulewski Funeral Home in East Cambridge.

Margaret G. Lane

Librarian

Margaret G. (Murphy) Lane died May 1 at Tippett House in Needham after a lengthy illness. She was 87.

Mrs. Lane was born in Cambridge, daughter of the late Patrick and Katherine (Dignan) Murphy, and was a graduate of Cambridge High and Latin School. A longtime Arlington resident, she worked as a cataloger at Widener Library at Harvard University.

She was the wife of the late John Lane Jr.; mother of John III of Arlington and Peter of Chelsea; and grandmother of David of New Hampshire, Nancy Brewer of Maine, and Andrea Marino of Arlington. She is also survived by three great-grandchildren and many nieces and nephews.

A Funeral Mass was held May 5 at St. Agnes Church in Arlington, with burial at Mt. Pleasant Cemetery in Arlington. Arrangements were made by the Keefe Funeral Home in Arlington.

Edward M. Lebo

Clock importer

Edward M. Lebo died April 30 in Wakefield. He was 87.

Mr. Lebo was born and raised in Pennsylvania, son of the late John and Odessa (Lewis) Lebo, and later was a resident of Cambridge and Wakefield. He studied literature, music and philosophy at Harvard University and was a member of the Harvard Institute for Learning in Retirement for many years. It was there that he continued his interest in literature, taking a variety of courses, including a seminar in Shakespeare at Oxford University.

He began his career as a reporter on Pennsylvania and New York newspapers. After World War II he worked as writer and assistant public relations director at U.S. Rubber Company in New York City. He later joined the firm of Hewitt Robbins Company of Stamford, Conn., as public relations director. Seven years later he resigned to start a clock importing business with his wife. Together they founded Mason and Sullivan Company, which they operated for 25 years until its sale.

After retirement he worked as a volunteer in numerous organizations, but the most rewarding volunteer project for him was the founding, with his wife, of the Cambridge chapter of the Alliance for the Mentally Ill, where he served as president for five years and is probably best remembered for the scholarly monthly newsletters he wrote on topical events and breakthroughs in the field of mental health.

He was the husband of Marjorie (Sullivan) Lebo; father of Kenneth E. of Wakefield and the late John A. Lebo; and brother of Dorothy Day of Florida, Janet Shaffer of Virginia, and John and Richard of Pennsylvania.

A Memorial Service was held at Emmanuel Episcopal Church in Wakefield. Burial was private. Arrangements were made by the McDonald Funeral Home in Wakefield.

Elizabeth P. McCarvill

Homemaker

Elizabeth P. (Casey) McCarvill died May 7 at home in Somerville after a brief illness. She was 71.

Mrs. McCarvill was born in Boston and was a longtime resident of Somerville. She worked as a homemaker.

She was the wife of the late Ralph J. McCarvill; mother of Kathleen McCarvill of Watertown, Patricia Benson and her husband Steve of Burlington, Maureen Stone and her husband Mike of Cambridge, and Mary McKenzie and Claire McCarvill of Somerville; grandmother of Meredith, Stephen, Michael, Ryan, Sean and Alexa; and sister of Thomas Casey, Mary Shea, Katherine Cremens, Ellen Allen, Peggy Fanning, John Casey, and the late Frances O'Reilly.

A Funeral Mass was held May 11 at St. Catherine of Genoa Church in Somerville, with burial at Woodlawn Cemetery in Everett. Arrangements were made by the Doherty Funeral Home in Somerville.

Ann E. Sheehan

Office worker

Ann E. (Buckley) Sheehan died May 4 at Spaulding Rehabilitation Hospital in Boston. She was 82.

Mrs. Sheehan was born in Randolph, daughter of the late Patrick J. and Elizabeth (Doonan) Buckley. She was a longtime resident of Cambridge before moving to Arlington 40 years ago.

She worked for the town of Arlington as part of the office staff in the Consumer Protection Office for 10 years, was a former state employee, and was a longtime member and secretary of the Arlington Catholic Women's Club.

She was the wife of the late Thomas F. Sheehan; mother of Thomas F. of New Jersey, John J. of California, Paul R. of Boston, Kevin R. of Framingham, Eileen M. of Arlington, and the late Elizabeth A. Sheehan; and sister of Gertrude Sands of Franklin and Ruth Bowes of Hyde Park. She is also survived by four grandchildren.

A Funeral Mass was held May 8 at Immaculate Conception Church in Cambridge, with burial at Mt. Pleasant Cemetery in Arlington. Arrangements were made by the Keefe Funeral Home in Arlington.

Marie A. Skane

Medical secretary

Marie A. (Fitzpatrick) Skane died May 1 in Florida after a brief illness. She was 80.

Mrs. Skane was born in Boston and lived many years in Cambridge before moving to Florida to join her family there several years ago. She was a medical secretary for Traveler's Insurance before her retirement.

She was the wife of the late John E. Skane; mother of Marie A. of Everett, and Barbara J. Corrigan and John E. Jr. of Florida; and sister of John Fitzpatrick of Boston, Evelyn Maher of Cambridge, Anna Gibbons of Boston, Irene Cotter of Arlington, Eleanor Babb and Claire Greene of Florida, and the late Joseph H. Fitzpatrick. She is also survived by four grandchildren and two great-grandchildren.

A Funeral Mass was held May 7 at St. Peter's Church in Cambridge, with burial at Mass. National Cemetery in Bourne. Arrangements were made by the Hickey Funeral Home in Cambridge.

Peter Szerejko

Longtime resident

Peter Szerejko died May 4 at home in Cambridge after a brief illness. He was 80.

Mr. Szerejko was a longtime resident of Cambridge. He was an Army veteran of World War II.

He was the husband of Nora (Pietrowski) Szerejko; and father of Carol Page. He is also survived by five grandchildren and six great-grandchildren.

A Funeral Mass was held May 8 at Sacred Heart of Jesus Church in Cambridge, with burial at St. Michael's Cemetery. Arrangements were made by the Szulewski Funeral Home in East Cambridge.

Mary A. Theriault

Homemaker

Mary A. (Chiasson) Theriault died May 4 at Pine Knoll Nursing Home in Lexington after a brief illness. She was 92.

Mrs. Theriault was born in Canada and was a longtime resident of North Cambridge before moving to Arlington 45 years ago. She worked as a homemaker, and was active in the parish of Notre Dame Our Lady of Pity Church in North Cambridge.

She was the wife of the late Joseph W. Theriault Sr.; and mother of Joseph W. Jr. of Lexington, Ronald R. of New Hampshire, M. James of Cohasset, and the late John Paul, Laurence E., and Doris A. Smith. She is also survived by 18 grandchildren and 25 great-grandchildren.

A Funeral Mass was held May 8 at St. Brigid's Church in Lexington, with burial at Mt. Pleasant Cemetery. Arrangements were made by the Devito-O'Donnell Funeral Home in Arlington.

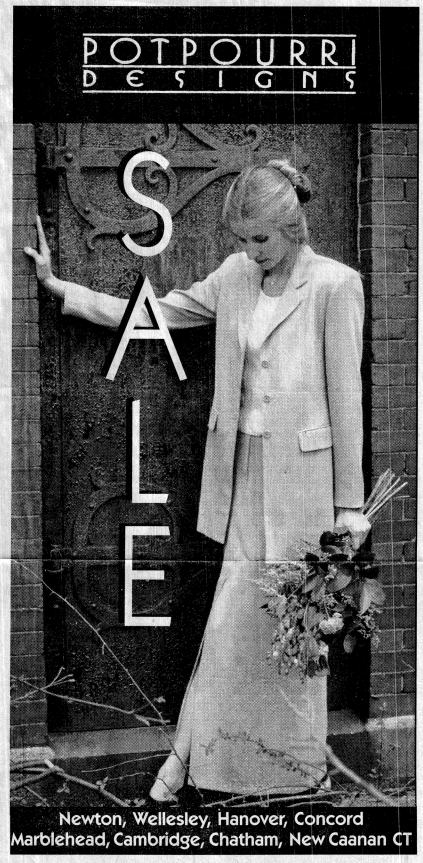
Harriette L. Williams

Librarian

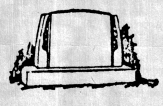
Harriette L. (Greene) Williams died May 4 at Mt. Auburn Hospital in Cambridge. She was 95.

Mrs. Williams was born in Wisconsin and was a resident of Cambridge for 54 years. She was a 1924 graduate of the University of Wisconsin and received her graduate degree from the School of Librarianship in Wisconsin in 1927. She was employed by the Harvard University Business School as a librarian and head of the reference department for 23 years, retiring in 1970.

Funeral services were private. Arrangements were made by the Rogers Funeral Home in Cambridge.



Est. 1905
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LEGAL NOTICES

ANNUAL MEETING
LEGAL NOTICE
THE ANNUAL MEETING OF THE SHAREHOLDERS OF NORTH CAMBRIDGE CO-OPERATIVE BANK WILL BE HELD AT ITS OFFICE, 2360 MASSACHUSETTS AVENUE, CAMBRIDGE, MASSACHUSETTS ON MAY 25, 1999 AT 5:00 P.M. (1) TO RECEIVE THE ANNUAL REPORT OF THE PRESIDENT; (2) TO ELECT DIRECTORS AND A CLERK OF THE BANK FOR THE ENSUING YEAR; AND (3) TO CONSIDER AND ACT UPON ANY MATTERS INCIDENTAL TO ANY OF THE FORECLOSING OR AS MAY OTHERWISE PROPERLY COME BEFORE SAID MEETING.

A copy of the Report of the Shareholders' Nominating Committee, as filed with the Clerk on April 30, 1999, is available for inspection by shareholders at North Cambridge Co-operative Bank, 2360 Massachusetts Avenue, Cambridge, Massachusetts during regular business hours up to and including the date of the meeting above specified.

The Bank's Financial Disclosures, Home Mortgage Disclosure Information, CRA Policy and Plan, and latest CRA performance Evaluation are available upon request of the Bank located at 2360 Massachusetts Avenue, Cambridge, MA or by calling (617) 876-5730.

Lucille A. Stackhouse
Clerk of the Corporation

AD #849340
Cambridge Chronicle, 5/13/99

AUSTIN GRILL LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given pursuant to Chapter 138, as amended, that Austin Grills, Inc. d/b/a Austin Grills, William Scott Shaw, Manager, holder of an All Alcoholic Beverages as a Restaurant License at 350 Massachusetts Avenue has applied for a change in manager from William Scott Shaw to Allison M. Donovan.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849433
Cambridge Chronicle, 5/13/99

BU BOATHOUSE NOTICE
LEGAL NOTICE
CITY OF CAMBRIDGE,
MASSACHUSETTS
CONSERVATION COMMISSION
NOTICE OF PUBLIC HEARING
Public notice is hereby given that the Cambridge Conservation Commission will hold the continuation of a public hearing on **Monday, May 17, 1999 at 7:00 P.M.** in the **Third Floor Conference Room, City Hall Annex, 57 Inman Street,** Cambridge, Massachusetts, on a request for an amendment to the Order of Conditions (DEP File # 123-133) issued on June 4, 1998 in accordance with the provisions of the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, s. 40).

BU requests approval to install additional piles, pile caps, stringers and decking associated with supporting the boathouse dock. A copy of the request is on file at the Conservation Commission office at City Hall Annex, 57 Inman Street, 2nd Floor, Cambridge, Massachusetts. Interested persons may appear at the public hearing to be heard.

Julia Bowdoin
Conservation Commission Director
(617) 349-4680

AD #849342
Cambridge Chronicle, 5/13/99

CARPENTER
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
MIDDLESEX, SS DIVISION
DOCKET NO. 99P2175GI
GUARDIANSHIP - MENTALLY ILL WITH SURETIES
NOTICE
To Katherine Carpenter of Cambridge in said county and heirs apparent or presumptive:

A petition has been presented in the above-captioned matter alleging that said Katherine Carpenter is a mentally ill person and praying that Kenneth McFadden of Nashville in the State of Tennessee and Frank Grimaldi of Cambridge in the county of Middlesex or some other suitable person be appointed her guardian; with the further authority to treat with antipsychotic medication in accordance with the treatment plan.

IF you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said court at Cambridge, on or before June 10, 1999.

WITNESS, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the fourth day of May in the year of our Lord one thousand nine hundred and ninety nine.

Marie A. Gardin
Acting Register of Probate Court

AD #847154
Cambridge Chronicle, 5/13/99

CHAS. RIVER YACHT CLUB NOTICE
LEGAL NOTICE
CITY OF CAMBRIDGE,
MASSACHUSETTS
CONSERVATION COMMISSION
NOTICE OF PUBLIC HEARING
Public notice is hereby given that the Cambridge Conservation Commission will hold the continuation of a public hearing on **Monday, May 17, 1999 at 7:00 P.M.** in the **Third Floor Conference Room, City Hall Annex, 57 Inman Street,** Cambridge, Massachusetts, on an Abbreviated Notice of Intent filed in accordance with the provisions of the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, s. 40).

The Charles River Yacht Club proposes to install a sewer connection leading from their existing holding tanks to the existing sewer lines at the MIT Boathouse. The new sewer lines will be a forced main with cleanouts every 100 feet. Construction will take place in the Charles River seawall, Riverfront Area, and the 100-foot Buffer Zone of Bank.

The Abbreviated Notice of Intent was submitted by the Charles River Yacht Club. A copy is on file at the Conservation Commission office at City Hall Annex, 57 Inman Street, 2nd Floor, Cambridge, Massachusetts. Interested persons may appear at the public hearing to be heard.

Julia Bowdoin
Conservation Commission Director
(617) 349-4680

AD #849344
Cambridge Chronicle, 5/13/99

DEMEKE SUMMONS
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
MIDDLESEX DIVISION
DOCKET NO. 99D1140DV1
SUMMONS BY PUBLICATION
Belachew Demeke, Plaintiff(s) v. Almaz Kidanemariam, Defendant(s)
To the above named Defendant(s):
A Complaint has been presented to this Court by the Plaintiff(s) Belachew Demeke, seeking a Divorce

You are required to serve upon Belachew Demeke plaintiff(s) - for plaintiff(s) whose address is 50 Bishop Allen Drive #6 Cambridge 02139 Ma your answer on or before July 6, 1999, 19. If you fail to do so, the court will proceed to the hearing and adjudication of this action. You are also required to file a copy of your answer in the office of the Register of this Court at Cambridge.

Witness, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, this 7th day of April, 1999.

Marie A. Gardin
Acting Register of Probate Court

AD #824643
Cambridge Chronicle, 4/29, 5/6, 5/13/99

ELIOT SQUARE LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given pursuant to Massachusetts General Laws, Chapter 148, that Eliot Square Enterprises, Inc., as Trustee of Eliot Square Enterprises Trust, has applied for a Garage and Gasoline Storage license for 37 vehicles and 370 gallons of gasoline in tanks of vehicles only at 100-102 and 104 Mt. Auburn Street.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849438
Cambridge Chronicle, 5/13/99

E. CAMBRIDGE NOTICE
LEGAL NOTICE
The annual report of the East Cambridge Savings Charitable Foundation, Inc. for the year ended December 31, 1998, is available for inspection at the office of the Foundation, 292 Cambridge Street, East Cambridge, MA 02141 Tel. (617) 354-7700 during regular business hours by any citizen who requests it within 180 days of the date of publication of this notice.

Jennifer L. Burns
Clerk

AD #849115
Cambridge Chronicle, 5/13/99

FRENCH BREAD LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given that New England PMP d/b/a PMP: The Original French Bread Pizza, Erik Lehmann, Manager, has applied for a Common Victualer License for 19 people at 1773 Massachusetts Avenue, Basement Level. If granted, said license would allow the sale and service of food and non-alcoholic beverages from 11:00 a.m. to 3:00 a.m., 7 days per week.

This applicants has also applied for an Entertainment License for Acoustic Guitar without amplification, Two TVs, One Pool Table, Background Music Below, at or Above Conversation Level. If granted, this license would be exercised from 11:00 a.m. to 1:00 a.m., 7 days per week.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849434
Cambridge Chronicle, 5/13/99

HERITAGE RETURN
LEGAL NOTICE
The annual return of the Cambridge Heritage Trust is available, at the address noted below, for inspection during normal business hours by a citizen who so requests within 180 days after the publication notice. Address: 58 Pleasant Street, Cambridge, MA 02139. Telephone: (617) 492-2406. The principal manager is Allison M. Crump, Trustee.

AD #849114
Cambridge Chronicle, 5/13/99

JUNE 16 AUCTION
LEGAL NOTICE
CAMBRIDGE SELF STORAGE
445 CONCORD AVENUE
CAMBRIDGE, MA 02138
(617) 876-5060
NOTICE IS HEREBY GIVEN THAT THE CAMBRIDGE SELF STORAGE WILL SELL AT PUBLIC AUCTION ON JUNE 16, 1999 AT 11:00 A.M. PERSONAL PROPERTY HERETOFORE STORED WITH THE UNDERSIGNED BY:

Unit #4013
Mary Cronin
Contains: Bags, Boxes, Rug, and Furniture

Unit #2090
Ericka Greer
Contain: Boxes, Plastic totes,

AD #842643
Cambridge Chronicle, 5/6, 5/13/99

KENNEDY ESTATE
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
PROBATE OF WILL
WITHOUT SURETIES
MIDDLESEX, SS DIVISION
DOCKET NO. 99P1[illegible]P
ESTATE OF Adelaide Majewski Kennedy
also known as Adelaide M. Kennedy
LATE OF Cambridge
IN THE COUNTY OF MIDDLESEX
NOTICE
A petition has been presented in the above captioned matter praying that a certain instrument purporting to be the last will of said deceased may be proved and allowed and that Eugene P. Kennedy of Cambridge in the County of Middlesex be appointed executor without giving surety on his bond.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before 10:00 a.m. in the forenoon on May 27, 1999.

In addition you must file a written affidavit of objections to the petition, stating the specific facts and grounds upon which the objection is based, within (30) days after the return day (or such other time as the Court, on motion with notice to the petitioner, may allow) in accordance with Probate Rule 16.

WITNESS, Sheila E. McGovern, Esquire, First Justice of said Cambridge, the twenty second day of April in the year of our Lord one thousand nine hundred ninety nine.

Marie A. Gardin
Acting Register of Probate Court

AD #845287
Cambridge Chronicle, 5/13/99

LIGHTING BIDS
LEGAL NOTICE
CITY OF CAMBRIDGE
PURCHASING DEPARTMENT
Sealed bids will be received at the Office of the Purchasing Department, Room 211A, City Hall, Cambridge, Mass. 02139-3219, until 11:00 A.M. **MAY 27, 1999** at which time and place they will be publicly opened and read-for furnishing the following the City of Cambridge:

STREET LIGHTING REPLACEMENT PARTS
CATERING SERVICES (CITY COUNCIL)
PLANT MATERIAL
ALUMINUM SIGN BLANKS & RELATED MATERIALS

The City of Cambridge reserves the right to waive any minor informalities or to reject any or all bids if it is in the City's best interest to do so. Specifications may be obtained at the Office of the Purchasing Agent. Each bid must be in a sealed envelope marked "Bid for (Commodity/Service)" and addressed to Andrea J. Spears, Acting Purchasing Agent.

Andrea J. Spears
Acting Purchasing Agent

AD #849435
Cambridge Chronicle, 5/13/99

LIMO LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given that Devis Jean-Jacques and Paul Bellande Bijou d/b/a Providence Limo Transportation, have applied for a Limousine/Livery license for an office only at 130 Brookline Street.

Said applicant is also applying for six vehicles to be kept off-site.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849432
Cambridge Chronicle, 5/13/99

LONGWELL ESTATE
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
MIDDLESEX, SS DIVISION
DOCKET NO. 96P6176CV
NOTICE OF DISCHARGE FROM CONSERVATORSHIP - GUARDIANSHIP
NOTICE
To John P. Longwell and Elizabeth Ann Ferrese conservators of the property of Marion V. Longwell of Cambridge in said County, to husband of said Marion V. Longwell to her heirs apparent or presumptive and to the Massachusetts Department of Mental health and to the United States Veterans Administration.

A petition has been presented in the above-captioned matter praying that said conservator be discharge.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before 10:00 a.m. on or before May 28, 1999.

WITNESS, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the first day of April in the year of our Lord one thousand nine hundred and ninety nine.

Marie A. Gardin
Acting Register of Probate Court

AD #844192
Cambridge Chronicle, 5/13/99

MDC NOTICE
LEGAL NOTICE
CITY OF CAMBRIDGE,
MASSACHUSETTS
CONSERVATION COMMISSION
NOTICE OF PUBLIC HEARING
Public notice is hereby given that the Cambridge Conservation Commission will hold the continuation of a public hearing on **Monday, May 17, 1999 at 7:00 P.M.** in the **Third Floor Conference Room, City Hall Annex, 57 Inman Street,** Cambridge, Massachusetts, on an Abbreviated Notice of Intent filed in accordance with the provisions of the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, s. 40).

The Metropolitan District Commission (MDC) proposes to repair the First Street Bridge over the Broad Canal on Memorial Drive. They will repair the bridge superstructure by replacement of steel stringers, addition of new floor beams, and repair of the approach span and overhead counter weight. The work will take place within the 100-foot Buffer Zone of Bank.

The Abbreviated Notice of Intent was submitted by the MDC. A copy is on file at the Conservation Commission office at City Hall Annex, 57 Inman Street, 2nd Floor, Cambridge, Massachusetts. Interested persons may appear at the public hearing to be heard.

Julia Bowdoin
Conservation Commission Director
(617) 349-4680

AD #849345
Cambridge Chronicle, 5/13/99

MUNICIPAL CODE HEARING
LEGAL NOTICE
The Ordinance Committee of the Cambridge City Council will conduct a public hearing on Wednesday, May 19, 1999 at 5:30 P.M. in the Sullivan Chamber, 795 Massachusetts Avenue, Cambridge, MA.

The purpose of this hearing is to discuss proposed changes to Chapter 8.28 of the Cambridge Municipal Code regulating youth access to tobacco and smoking in workplaces and public places.

For the Committee.
Councillor Henrietta Davis, Chair

AD #849493
Cambridge Chronicle, 5/13/99

NETWORK PLUS LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given pursuant to Massachusetts General Laws, Chapter 148, that Network Plus Corp., 185 Bent Street, Susan Spengler, manager, has applied for a Garage and Gasoline Storage license at 185 Bent Street for 800 gallons of #2 diesel fuel in above ground tanks.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849490
Cambridge Chronicle, 5/13/99

PAPA RAZZI LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given pursuant to M.G.L.c. 138, as amended, that BBRG Operating, Inc., d/b/a Papa Razzi, Joseph Dunleavy, manager, holder of an All Alcoholic Beverages as a Restaurant license at 58-120 First Street, has applied for a transfer of indirect beneficial interest.

The current stockholders are Mark L. Hartzfeld, Francis P. Bissaillon, Ann Marie Lagrotteria, Charles F. Sarkis, The Westwood Group, Inc.

Current stockholders and Board Members of The Westwood Group, Inc., are Richard P. Dalton, President and Chief Executive Officer, Paul J. DiMare, Director, A. Paul Sarkis, Executive Vice President, Charles F. Sarkis, Chairman of the Board.

The proposed stockholders and Board Members of The Back Bay Restaurant Group, Inc., will be Mark L. Hertzfeld, President; Francis P. Bissaillon, Vice President, Treasurer, Clerk and Director, Ann Marie Lagrotteria, Charles F. Sarkis, Director and The Westwood Group, Inc.

The proposed stockholders and Board members of The Westwood Group, Inc., are Richard P. Dalton, President and Chief Executive Officer, Paul J. DiMare, Director, A. Paul Sarkis, Executive Vice President and Charles F. Sarkis, Chairman of the Board.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849431
Cambridge Chronicle, 5/13/99

PATCHIAVOS ESTATE
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
PROBATE OF WILL ADMINISTRATION WITH THE WILL ANNEXED WITH SURETIES
MIDDLESEX DIVISION
DOCKET NO. 96P4219AA
Estate of John L. Patchiavos also known as John L. Patchiavos
late of Cambridge
in the County of Middlesex
NOTICE
A petition has been presented in the above-captioned matter praying that a certain instrument purporting to be the last will of said deceased may be proved and allowed and that Janice Dapergolas of Concord in the state of New Hampshire or some other suitable person be appointed administratrix with the will annexed of said estate.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before 10:00 in the forenoon on May 27, 1999.

In addition you must file a written affidavit of objections to the petition, stating the specific facts and grounds upon which the objection is based, within (30) days after the return day (or such other time as the Court, on motion with notice to the petitioner, may allow) in accordance with Probate Rule 16.

WITNESS, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the twenty-second day of April in the year of our Lord one thousand nine hundred and ninety nine.

Marie A. Gardin
Acting Register of Probate

AD #849349
Cambridge Chronicle, 5/13/99

PHETTEPLACE ESTATE
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
MIDDLESEX DIVISION
DOCKET NO. 99P1862AD
ADMINISTRATION
WITHOUT SURETIES
Estate of Charles E. Phetteplace
late of Cambridge
in the County of Middlesex
NOTICE
A petition has been presented in the above-captioned matter praying that Ronald G. Phetteplace of Marshfield in the County of Plymouth be appointed administrator of said estate without giving surety on his bond.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said Court at Cambridge on or before 10:00 in the forenoon on May 27, 1999.

WITNESS, Sheila E. McGovern, Esquire, First Justice of said court at Cambridge, the twenty-third day of April in the year of our Lord one thousand nine hundred and ninety nine.

Marie A. Gardin
Acting Register of Probate Court

AD #849119
Cambridge Chronicle, 5/13/99

RESEARCH PARK NOTICE
LEGAL NOTICE
CITY OF CAMBRIDGE,
MASSACHUSETTS
CONSERVATION COMMISSION
NOTICE OF PUBLIC HEARING
Public notice is hereby given that the Cambridge Conservation Commission will hold the continuation of a public hearing on **May, May 17, 1999 at 8:30 P.M.** in the **Third Floor Conference Room, City Hall Annex, 57 Inman Street,** Cambridge, Massachusetts, on a Notice of Intent filed in accordance with the provisions of the Massachusetts Wetlands Protection Act. (M.G.L. c. 131, s. 40).

The Cambridge Research Park (CRP) site is an approximately 10-acre parcel located at Third Street and Linskey Way in the Kendall Square area of Cambridge. Work is proposed along the Broad Canal within the 100-foot buffer zone of inland bank. This work will include construction of an underground parking garage, associated utilities and appurtenances, soil remediation and open space landscaping.

The Notice of Intent was submitted by Cambridge Research Park, LLC. A copy is on file at the Conservation Commission office at City Hall Annex, 57 Inman Street, 2nd Floor, Cambridge, Massachusetts. Interested persons may appear at the public hearing to be heard.

Julia Bowdoin
Conservation Commission Director
(617) 349-4680

AD #849343
Cambridge Chronicle, 5/13/99

SIDNEY PARK NOTICE
LEGAL NOTICE
NOTICE OF AN ACTIVITY AND USE LIMITATION
SIDNEY PARK/UNIVERSITY COMMONS
CAMBRIDGE, MASSACHUSETTS
RELEASE TRACKING NO. 3-17805
Pursuant to the Massachusetts Contingency Plan (310 CMR 40.1073), a Notice of Activity and Use Limitation on the below disposal site has been recorded and/or registered with the Middlesex Registry of Deeds on April 13, 1999.

The Notice of Activity and Use Limitation will limit the following site activities and uses on the above property:

● Construction activity or any other excavation activity in the soil more than three (3) feet below the surface at the disposal site which is subject to the Notice of Activity and Use Limitation, except by workers who are adequately protected and trained and implementing federal and state occupational, health and safety requirements (see e.g., 129 CFR and 1910.120) and provided it is conducted in accordance with performance standards for Utility Related Abatement Measures set forth in 310 CMR 40.0460, and the Soil Management procedures pursuant to 310 CMR 40.0030;

● Any change in disposal site usage; and

● Any landscaping or other excavation activity that would reduce the three feet of soil cover overlying the contaminated soil within the Disposal Site which is subject to the Notice of Activity and Use Limitations;

Any persons interested in obtaining additional information or reviewing the Notice of Activity and Use Limitation and the disposal site file may contact Mr. Philip Trussell of M.I.T. Real Estate Office, 238 Main Street, Cambridge, Massachusetts at Tel: 617-253-4303.

AD #849491
Cambridge Chronicle, 5/13/99

SPECIAL MEETING
LEGAL NOTICE
A Special Meeting of the Corporation of East Cambridge Savings Bank will be held at the Main Office of East Cambridge Savings Bank, 292 Cambridge Street, Cambridge, on Monday, June 28, 1999, at 5:00 p.m.

AD #849116
Cambridge Chronicle, 5/13/99

TIME OUT LICENSE
LEGAL NOTICE
CITY OF CAMBRIDGE
BOARD OF
LICENSE COMMISSIONERS
Notice is hereby given that Cambridge Rental Equipment, Inc., d/b/a Time Out, Karen Sullivan, Manager, has applied for a Common Victualer License for 19 people to be exercised at 15 Rufo Road. Said license, if approved, would allow the sale and service of food and non-alcoholic beverages from 10:00 a.m. to 9:00 p.m., seven days per week.

The hearing on this application will be held on Tuesday evening, May 25, 1999 at six o'clock in the Basement Conference Room of the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge.

Benjamin C. Barnes
Kevin J. Fitzgerald
Henry Breen
License Commission

AD #849436
Cambridge Chronicle, 5/13/99

WILSON GUARDIANSHIP
LEGAL NOTICE
COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT
MIDDLESEX, SS DIVISION
DOCKET NO. 99P1825GM
GUARDIANSHIP - MINOR - WITHOUT SURETIES
NOTICE
To all persons interested in Dajani M. Wilson of Cambridge in said County, a minor.

A petition had been presented in the above-captioned matter praying that Victoria McLaurin of Cambridge in the county of Middlesex be appointed guardian of said minor, with custody, without giving a surety on her bond.

If you desire to object to the allowance of said petition, you or your attorney must file a written appearance in said court at Cambridge, on or before May 18, 1999.

Witness, Sheila E. McGovern, Esquire, First Justice of said Court at Cambridge, the 14th day of April in the year of our Lord one thousand nine hundred and ninety nine.

Marie A. Gardin
Acting Register of Probate Court

AD #844191
Cambridge Chronicle, 5/13/99

YACHT CLUB NOTICE
LEGAL NOTICE
CITY OF CAMBRIDGE,
MASSACHUSETTS
CONSERVATION COMMISSION
NOTICE OF PUBLIC HEARING
Public notice is hereby given that the Cambridge Conservation Commission will hold the continuation of a public hearing on **Monday, May 17, 1999 at 7:00 P.M.** in the **Third Floor Conference Room, City Hall Annex, 57 Inman Street,** Cambridge, Massachusetts, on a request for an amendment to the Order of Conditions (DEP File # 123-132) issued on April 6, 1998 in accordance with the provisions of the Massachusetts Wetlands Protection Act, (M.G.L. c. 131, s. 40).

Charles River Yacht Club requests approval for installation of fuel piping alongside the dock rather than underneath as previously permitted. A copy of the request is on file at the Conservation Commission office at City Hall Annex, 57 Inman Street, 2nd Floor, Cambridge, Massachusetts. Interested persons may appear at the public hearing to be heard.

Julia Bowdoin
Conservation Commission Director
(617) 349-4680

AD #849346
Cambridge Chronicle, 5/13/99

ZECKHAUSER REPORT
LEGAL NOTICE
The annual report of the Richard and Sally Zeckhauser Foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date hereof. Address: 138 Irving Street, Cambridge, MA 02138, Tel: 617-495-1174. Principal Manager: Richard Zeckhauser. This notice is given in accordance with section 6104(d) of the Internal Revenue Code, as amended.

AD #849341
Cambridge Chronicle, 5/13/99

FIRST PUBLICATION NO. 2843

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

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:

Amend Chapter 8.28 by deleting the present Chapter 8.28 and substituting a new Section 8.28 entitled "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places," to prohibit smoking in restaurants unless the restaurant obtains a permit from the Cambridge Health Department; to increase the penalties for violation of the ordinance for both criminal and non-criminal deposition and to strengthen restrictions on youth access to tobacco.

Passed to a second reading at the City Council Meeting held on May 17, 1999 and on or after May 31, 1999 the question comes on passing to be ordained.

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 Zoning 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.

Dr. Edward Nardel, Chief of Pulmonary Medicine for the Cambridge Health Alliance, resident 51 Morse Road in Newtonville, described the medical problems associated with tobacco. He also noted that ordinances prohibiting smoking have been an important factor in causing people to quit smoking.

Dr. Nardel discussed the substantial evidence regarding the health dangers of second hand smoke. He stated that he is a public health officer for the Commonwealth, and from a public health perspective, it is important to address restaurants, which are one of the few remaining public places where environmental tobacco smoke persists.

Dr. David Rosenthal, 23 Concord Avenue, Director of Health Care Services for Harvard University, past president of the American Cancer Society, stated that environmental tobacco smoke is just as dangerous as smoking. There is a fifteen percent to eighteen percent increase in the risk of cancer. There is also a long-term heart disease and lung disease increase associated with smoking. Environmental tobacco smoke can be an asthma trigger. Ventilation systems currently in use do not cure the dangerous exposure to environmental tobacco smoke. He encouraged the passage of the proposed legislation.

D.J. Wilson, Massachusetts Municipal Association, resident of 87 Wallace Street, Malden, described the state of regulations in surrounding communities. Attachment B. He noted that Watertown is about to adopt a new regulation.

Harold Cox stated that the Public Health Department has made extensive efforts to get input from all parts of the concerned communities. Mr. Cox noted that his staff has submitted for the record additional information about the dangers of second hand smoke and the state of current regulations. Attachment C. He introduced John Clifford, owner of the Green Street Grill.

John Clifford, 55 Aberdeen Avenue, stated that he is also head of the International Restaurant Association and on the Executive Board of the Chamber of Commerce. He stated that through ongoing dialogue, there has been a compromise that restaurants can live with, and he urged the committee to recommend adoption to the full City Council.

Eileen Sullivan, Coordinator of the Five City Tobacco Collaborative, 71 Fairmont Avenue, Somerville, described the current proposal, outlined in the attachments. Smoking is prohibited, but owners who fit exemption can apply for a permit from the Health Department. Restaurants can choose to become adult-only and thereby be exempt. Smoking is permitted in the bar area of restaurants as long as that area is enclosed or is located at least six feet from restaurant seats. It can encompass 25% of total seating. Nightclubs and bars are exempt. Function rooms are not regulated.

Ms. Sullivan stated that in the youth access area, the recommendation is to ban self-service displays and vending machines in places where people under 18 are allowed. It also increases fines.

Councillor Russell said that she would like to know that all the restaurant owners know about the proposal. She stated her support for limiting smoking.

Councillor Born said that she is concerned about restaurants choosing to become "adult only" and thus creating more places in the city to which children cannot come.

Ms. Sullivan stated that there is only one restaurant that she is aware of that is interested in becoming adults-only, the Algiers. The Health Department expects that this exemption will be used by pub-type establishments.

Mr. Wilson stated that Attleboro has had three years of experience with a similar regulation and it has broken down along the bar/restaurant divide, except for one bakery that elected to become adult-only.

Councillor Triantafillou then invited public comment.

Walter Lamb, 57 Ellery Street, spoke in support of the proposal as a frequent restaurant goer. He has lost four relatives to tobacco related illnesses. Cigarette smoke is distasteful, as is cigarette butt litter. He described a business lunch in which he participates every week that moved from the Greenhouse Restaurant because there were always a few, not many, smokers, but because of the ventilation, the smoke was irritating.

James Tipping, One Memorial Drive, stated that he is a member of the Committee of Restaurant Owners that participated in the discussions that resulted in the current proposal. He praised the process and the Health Department's hard work and willingness to listen and address the concerns of restaurant owners.

Councillor Davis asked whether there will be a competitive advantage to restaurants if Cambridge is the only community where smoking is permitted.

Mr. Tipping said that he doubts very much that it will make Cambridge more of a smoking city.

Paul Schlaver, 188 Green Street, Director of the Consumer Council, spoke in support of the proposal. The process was fair and thorough. He stated that tough laws and strong restrictions make it more likely that kids will make it to the age of 21 without smoking, at which point, statistics show it is unlikely that they will take up the habit.

Ellen Davis, 58 Arborway, Jamaica Plain, Cambridge Prevention Coalition, spoke in support of the proposal. She provided statistics on youth access to tobacco. She also noted that 19% of Cambridge Rindge and Latin School students have asthma. She submitted a copy of her remarks for the record.

John Keyes, 1221 Cambridge Street, facilitator, Fresh Start Program sponsored by the American Cancer Society, stated that smoking is addictive behavior that provides no positive value. Tobacco smoke is dangerous. Young people associate smoking with adult behavior. It is important to set and example of public adult behavior that does not include smoking. He supports the proposal.

Councillor Triantafillou then invited testimony in opposition.

Jerome Lettvin, 1105 Massachusetts Avenue, retired professor from MIT, spoke in opposition. The anti-smoking literature is full of misleading issues. The natural rate of lung cancer is 30%, tobacco increased the risk to 31.3%. He is 80 years old and has smoked three packs of cigarettes per day for 60 years. Cambridge is a democracy; people can choose whether to go to restaurants that allow or prohibit smoking. No legislation in addition to clear labeling is required. He said that it is not nicotine that is addictive; it is the habit of smoking itself.

Steven Helfer, 3 Crawford Street, spoke in opposition. He stated that adult only restaurants increase family separation which is bad. He disputed the validity of the evidence about the health effects of second-hand smoke. He noted a federal judge's criticism of an EPA report. Despite the fact that many people have given up smoking, the incidence of asthma has skyrocketed. He cited various studies and reports. These issues are not as conclusive as public health officials suggest. He urged the City Council to leave the ordinance as it currently stands.

Josh Silber, 69 Day Street, Somerville, MIT student, stated that he is 21 years old, and stated that the problem of youth access should not be solved by limiting what adults can do in public.

Councillor Triantafillou noted that Craig Kelly, 6 St. Gerard Terrace, submitted a letter in opposition to the proposal.

Councillor Sullivan thanked all of those involved in working on the proposal.

Councillor Davis asked about the requirement for a six-foot bar barrier. Ms. Sullivan explained that it is a spacer, but smoke can move. Councillor Davis stated that people are surprised that Cambridge does not have a stronger policy. She is disappointed and surprised at how political this has become. She is not proud of this ordinance and she is sorry that the City did not try harder to go further.

Councillor Sullivan moved that the recommendation be forwarded to the City Council with a favorable recommendation. The motion passed on a voice vote without objection.

Mr. O'Brien stated that the Health Department and Health Alliance were disappointed that the initial proposal was not more supported by the community. Less than 100 of the 400 restaurants in the city will have any smoking. The Health Department will continue to work for more.

Councillor Davis asked whether there are legal requirements related to the ADA that required more. Mr. Wilson stated that there have not been many ADA cases on the smoking issue, and the ADA does not require "heroic" measures.

Councillor Triantafillou thanked all those present for their attendance.

The hearing was adjourned on the motion of Councillor Sullivan at 7:08 p.m.

For the Committee,

Katherine Triantafillou

Councillor Katherine Triantafillou

Additional Attachments

Attachment F: **Letter from Ellen Davis, Community Health Educator for the Cambridge Prevention Coalition.**

Attachment G: **Letter from Craig A. Kelly.**

A 1

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 5A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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:

A2

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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

Minor: Any individual who is under the age of eighteen (18).
Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

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

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in 8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke

into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. **Prohibition of Smoking in Workplaces Enforcement and Penalties.**

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 **Definitions for Restrictions on Smoking in Public Places:**
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.

E5

Workplace

	1995 Ordinance	Proposed Ordinance
Prohibition of smoking	Smoking is prohibited in any room normally frequented during the course of employment including work areas, employee lounges/restrooms, conference rooms, hallways.	Smoking in any workplace is prohibited except for designated smoking areas.
Designated smoking area	Employer may provide smoking lounge provided that employees need not enter for any other purpose; that lounge is sealed, vented to the outside and does not re-circulate smoke throughout work areas; and that a smoke-free lounge is provided.	A smoking area may be designated provided that the area is enclosed, smoke is vented to the exterior of the building, and employees need not enter the smoking area. A non-smoking area of comparable size and with comparable amenities must be provided.
Creation of smoking policy		A smoking policy shall be available for viewing.
Posting of areas		Areas must be conspicuously marked
Enforcement	Non-criminal disposition: $25 per violation. Criminal: not exceeding $50 per violation.	1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

1/25/99

Youth Access

	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Permit	Tobacco sales permit required (summary)	Same	Dept of Revenue	N/A
Proof of age	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.	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.	N/A	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.
Sale to minors	Prohibited (summary)	Same	Same	Same
Distribution of free samples	Distribution of free products, samples or coupons/vouchers for free or reduced-price tobacco products is prohibited.	Same	N/A	
Packaging of cigarettes	Sale/distribution of single cigarettes or any product not in its original package is prohibited.	Sale/distribution of single cigarettes or any product not in its original package is prohibited. Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.	Dept of Revenue	Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.
Self-service displays	All free-standing self-service displays must be within view of staff at the cash register and no more than 10 feet from a register (summary)	All self-service displays are prohibited. Exception: displays located in facilities in which persons under 18 are not allowed.	N/A	All self-service displays are prohibited. Exception: displays located in Facilities in which persons under 18 are not allowed.

Signs	MGL must be posted (summary)	Same	Same	N/A
	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Vending machines	Vending machines must be equipped with a lock-out device; must be located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	Sale of tobacco products by vending machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	N/A	Sale of tobacco products by vending Machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.
Enforcement - sales permit	Tobacco sales permit may be suspended for 15 days (1 violation), 60 days (2 violations), or revoked (3 violations within 12 months).	Tobacco sales permit may be suspended after 3 violations within 24 months.		
Enforcement - other penalties	Over the counter: 1st offense ($50) 2nd ($100) 3rd/subsequent in 1 year ($300). Vending machine: 1st offense ($100) 2nd offense ($200) 3rd offense ($300) Criminal penalty - fine not exceeding $25 per offense. Non-criminal disposition - $25 per violation.	Sales to minors: 1st offense ($100) 2nd ($200) 3rd/subsequent in 2 years ($300). Other violations may be subject to a fine of $25 per day.	MGL (criminal offense) 1st offense ($100) 2nd offense ($200) 3rd offense ($300)	1st offense – warning 2nd offense - $250 3rd offense - $1,500 4th offense - $5,000 5th offense - $10,000

EXAMPLES OF PROPOSED ORDINANCE AMENDMENT

Mary Chung	no bar	restaurant is smokefree
Algiers Coffeehouse(option 1)	no bar	restaurant is smokefree (all ages welcome)
Algiers Coffeehouse (option 2)	no bar	declare establishment limited to 18 and older at all times; 50% smoking area- *section C*
Sail Loft	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree function room is smoking or smokefree depending on renters of the function room
The Field (option 1)	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	during certain hours when pub menu rather than full menu or entertainment, smoking area is increased to 50% of seating as long as seating is limited to 18 and older *(section E-dual use)*
The Field (option 2)	declare establishment limited to 18 and older at all times; 50% smoking area (total seats- bar and restaurant)-*section C*	
John Harvard Brew House	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree during certain hours when pub menu rather than full menu, smoking area is increased to 50% of seating as long as seating is limited to 18+ *(section E-dual use)*
Green Street Grill	bar (25% or less of total seats) - smoking at all times if seats at bar are limited to 18+ *(sectionA)*	restaurant is smokefree except for hours when live entertainment is offered as long as patrons limited to 18+ *(section F-dual use)*
CanTab Lounge	50% smoking (bar and restaurant seats total) as long as smoking section is limited to 18 and older *(section D)*	smoking allowed during hours when live entertainment is offered as long as patrons limited to 18 and older *(section F-dual use)*

F

CAMBRIDGE PREVENTION COALITION

DEPARTMENT OF HUMAN SERVICE PROGRAMS
CITY OF CAMBRIDGE

Cambridge Prevention Coalition
"Youth, Parents, Providers: Working Together For Substance Abuse Prevention"

19R Brookline Street
Cambridge, MA 02139

Voice: 617 349-6330
TTY: 617 349-6330
Fax: 617 349-6283

My name is Ellen Davis. I am a Community Health Educator for the Cambridge Prevention Coalition. I would like to thank the Health and Hospitals Committee of the Cambridge City Council for providing us with this opportunity to respond to the proposed changes in the tobacco control regulations.

My purpose this evening is to present the reasons the Cambridge Prevention Coalition supports these changes. The Cambridge Prevention Coalition is a community-based coalition linking substance abuse prevention to a range of health promotion initiatives, including alcohol, tobacco and other drug prevention education for youth. While the City of Cambridge has already taken steps to address underage smoking and to reduce the risk of exposure to second-hand smoke, more effort is still needed.

Results from both the 1997 Middle School Health Survey (administered to all Cambridge Public School students in grades 6-8) and the 1998 Teen Health Survey (administered to all students at Cambridge Rindge and Latin School) help to illuminate our concerns. In these surveys 8% of middle school students, virtually all of whom are 14 years old or younger, and 21% of CRLS students reported smoking cigarettes in the past 30 days. Of greater concern is the fact that 16% of middle grade students who smoked in the past 30 days, and 42% of CRLS students under the age of 18 who smoked, usually purchased cigarettes from a store. Clearly additional efforts to reduce youth access to tobacco are needed.

Another important finding from these surveys was the fact that 21% of middle school students and 19% of CRLS students reported that they have asthma. In other words, since second hand smoke can exacerbate asthma, approximately one out of every five children is at even greater risk from second hand smoke exposure. Restricting smoking in public places such as restaurants and malls allows these children, youth and their families to go to public places without worrying about the effects of other's smoking on their health. In addition, given the fact that second hand smoke also increases the risk of respiratory tract illnesses in children, causes eye and nasal irritation in adult nonsmokers, and has been linked to numerous other health concerns, every effort should be made to reduce second hand smoke exposure for children, youth and adults.

Finally, the Cambridge Prevention Coalition believes that restricting smoking in public places helps to create a community atmosphere that further discourages young people from starting to smoke. Youth need to get the message that smoking is not an adult activity, it is an unhealthy activity, regardless of your age. Restricting smoking in public places provides this message to youth and adults alike.

Again I thank you for the opportunity to offer the Cambridge Prevention Coalition's support for these efforts to reduce both youth access to tobacco, and everyone's risk of secondhand smoke exposure.

6

6 Saint Gerard Terrace
Cambridge, MA 02140
5 May, 1999

City Council
Cambridge, MA 02139
Via Fax

Re: Proposed Smoking Ban in Cambridge Restaurants

Although I am a non-smoker, I oppose the proposed smoking regulations for Cambridge restaurants and bars. Unlike many other purported public health issues, exposure to tobacco smoke in Cambridge restaurants is a problem with a simple cure. If a patron thinks a restaurant is too smoky for dining, he or she can eat elsewhere, after first informing the manager of the lost business. In a free market economy, in a city packed with restaurants and bars, nothing talks like a disappearing client base. Admittedly, workers can't pack up and move as easily as diners, but it is not at all clear that there aren't other, less intrusive methods to protect worker health such as smoke eaters or ventilation systems.

In conversations with numerous other residents of Cambridge, I have found that most people who support limiting or banning smoking in restaurants do so because they want to be able to eat anywhere without worrying about cigarette smoking as opposed to being worried about workers' health or other health related issues. Further, it is tough to argue that smoking in a restaurant poses the same level of public health risk that drinking in the same place does. If we are concerned about safety, why not ban drinking as well?

Only when the City has successfully addressed all of the safety problems that currently put people in the hospital, or worse yet, the cemetery, should it find time to think about banning smoking in restaurants. Until then, this is an issue properly settled by the market.

Craig A. Kelley
6 St. Gerard Terrace
Cambridge, MA 02140
617-354-8353

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

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

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

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

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Private Club: A nonprofit entity with a paid membership.

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

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

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

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

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

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

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

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

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

A8

B. Election for coverage by private facilities:

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

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:
Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:
A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section I. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking*.
Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code and Cambridge municipal code.
License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within

the City of Cambridge.

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

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If the ownership of a restaurant with a *permit to allow smoking* is transferred to a new person, the right to a *permit to allow smoking* is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. **Violations and Penalties:**

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7)

days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

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C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 Implementation:

This revised ordinance will be effective June 1, 1999.

Tobacco Control Ordinance Process To Date:
(Included are meetings with the Cambridge business community, elected officials, and some community groups. Additional meetings occurred with Cambridge city departments and the public health community.)

March 1998:

March 10, 1998:	*Tab prints "Smoke Wars; City prepares to re-ignite smoking ban for restaurants, bars"*
March 11, 1998:	**CHA Public Health Sub-Committee meeting to discuss changing smoking ordinance**
March 12, 1998:	*Chronicle prints article "City Mulls Tougher Smoking Laws"*

May 1998:

May 1999:	Cambridge Public Health Department Report "The Facts on ETS" sent to the City Council

July 1998:

Week of July 6:	Mailing sent to all restaurants about restaurant forum
July 9, 1998:	**Meeting with Cambridge Licensee Advisory Board**
July 16, 1998:	**9:00 a.m. and 7:00 p.m. Two Restaurant Forums** (attended by 36 people, 10 restaurants, & 2 hotels)
July 16, 1998:	*Chronicle prints "Proposed smoke ban ignites debate"*
July 21, 1998:	Howard Koh, Commissioner of the MA Department of Public Health, sends "A Cloud Over Our Cities and Towns: What Policy Makers Need to Know about Secondhand Smoke"
Week of July 27:	Mailing sent to all restaurants and retailers about August 5 C.P.H.C. public hearing
July 27, 1998:	Tobacco Control Update , Number 1 is sent to concerned individuals
July 28, 1998:	*Tab prints ad for 8/5 public hearing*
July 30, 1998:	*Chronicle prints ad for 8/5 hearing*

February 2, 1999:	Individual Visit with Cambridge Marriott Hotel
February 3, 1999:	**Presentation to Cambridge Licensee Advisory Board**
February 4, 1999:	*Cambridge Chronicle prints notification of 2/23 Retailer Forum*
Week of February 8:	Mailing to all restaurants and retailers regarding forums
February 8, 1999:	Individual Visit to Hyatt Regency Hotel
February 10, 1999:	**Presentation to CHA Cambridge Public Health Sub-Committee**
February 18, 1999:	*Cambridge Chronicle prints notification of Restaurant Forum*
February 19, 1999:	Individual Visits to North Cambridge Establishments regarding upcoming forums: Cambridge Common, Fraser's, Forest Café, Temple Bar, Harvard House of Pizza, Changso Restaurant, Cottonwood Café, Christopher's, Kaya Restaurant, Porter Square Café, Newtowne Grille, Andy's Diner, Porterhouse Café, Maharaja Restaurant, Sun's Café, Corner Restaurant, Garbun Chinese Restaurant, Jose's Mexican Food
February 23, 1999:	**3:00 p.m. Tobacco Retailer Forum** (4 attended)
February 25, 1999:	Forums canceled because of snow. However, 10 people did attend and were given information

March 1999:

Week of March 1:	Mailing sent to all restaurants about rescheduled forum
March 2, 1999:	Meeting with City Solicitor
March 11, 1999:	**3:00 p.m. Restaurant Forum** (19 attended)
March 18, 1999:	Individual Visit with Café Pomplano
March 25, 1999:	Individual Visit with Casa Portugal

April 1999:

April 6, 1999:	Meeting with Councilor Born

April 7, 1999:	Meeting with Councilor Davis
April 7, 1999:	Meeting with Mayor Duehay
April 9, 1999:	Tobacco Control Update, Number 4 sent to concerned individuals
April 15, 1999:	Individual Visit to 8 Portuguese speaking restaurant owners or managers with Portuguese speaker: Individual Visit to Firehouse Grill Individual Visit to Portugalia Individual Visit to Sunset Grill Individual Visit to Middle West Grill Individual Visit to Casal Bakery Individual Visit to Corner Delight Individual Visit to Figueirense Restaurant Individual Visit to Atasca
April 20, 1999:	Meeting with Councilor Reeves
April 20, 1999:	Meeting with Councilor Triantafillou
April 20, 1999:	Meeting with Councilor Russell
April 20, 1999:	Meeting with Deputy City Manager
April 20, 1999:	Submitted Response to City Council Order
April 21, 1999:	**Presentation to CHA Joint Board of Health**
April 21, 1999:	**Presentation to CHA Board of Trustees**
Week of April 26:	Mailing to 17 restaurants where food is incidental to alcohol
April 26, 1999:	City Council to refer to both Health & Hospital and Ordinance Committees
April 28, 1999:	Meeting with Councilor Galluccio
April 29, 1999:	*Chronicle prints article "Smoking ban compromise proposed"*
April 30, 1999:	Meeting with Councilor Toomey

C

COMPARISON OF PROPOSED CAMBRIDGE ORDINANCE TO LOCAL COMMUNITIES

Restaurants

	Cambridge (current)	Cambridge (proposed)	Boston	Brookline	Somerville
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with bar area (same room)	50% nonsmoking section	no smoking in restaurant permit to allow smoking at bar/defined area with 6 feet barrier	no smoking in restaurant smoking permitted at bar/ 6 ft barrier	no smoking	no smoking in restaurant smoking permitted at bar/ 6 ft barrier with variance
Restaurant with bar in separate room	50% nonsmoking section	no smoking in restaurant permit to allow smoking in bar area	no smoking in restaurant smoking permitted at bar	no smoking in restaurant smoking permitted at bar with variance and ventilation	no smoking in restaurant smoking permitted at bar with variance
Bar	smoking permitted	permit to allow smoking if percentage of alcohol is greater than food *or* establishment is only 18+	smoking permitted	no smoking	smoking permitted
Nightclubs	smoking permitted	permit to allow smoking during certain hours if 18+ and live entertainment	smoking permitted	no smoking	smoking permitted during certain hours if apply for a variance

1/25/99

D

Secondhand Smoke: The Facts

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

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.
(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.
(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke in bars that allow smoking are between 440-450% higher than in residential settings.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.
(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.
(USDHHS. Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

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

February 24, 1998

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Restaurants

	1995 Ordinance	Proposed Ordinance
Restaurants *indoor seating*	Smoking is prohibited except for designated smoking area. Restaurants with fewer than 25 seats are exempt. Smoking area must not comprise more than 50% of seating capacity and should be set up to minimize transfer of smoke to non-smoking areas (using ventilation systems, barriers, etc.) Children under 12 may not be seated in smoking area; from age 12 to 18 may sit in smoking area if accompanied by parent/guardian.	Smoking is prohibited unless restaurant obtains permit to allow smoking from the Cambridge Public Health Department. Establishments that choose to be adult only (ages 18 and older) at all times may designate up to 50% of seating to allow smoking.
Restaurants *outdoor seating*	not regulated	Smoking permitted if outdoor area is not enclosed.
Restaurants *bar area*	Not specifically addressed	Permit to allow smoking if smoking area (25%) is 18+ and bar area is enclosed or defined section with 6 ft barrier
Bars **Dual use** **Restaurants** *in which food is incidental to alcohol*	Exempt	Permit to allow smoking (50%) if establishment is restricted to persons age 18 and older. Permit to allow smoking (50%) during certain hours when food incidental or entertainment and 18+ only Permit to allow smoking (50%)
Nightclubs (Dual use)	Exempt	Permit to allow smoking during time periods in which establishment is restricted to 18 + and certain categories of live entertainment license such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

Function rooms	Smoking permitted if used for private functions.	Same
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Common victualer and liquor licenses may be suspended or revoked after 3 or more violations within a 12 month period. Criminal penalty - fine not exceeding $50 per offense.	Non criminal disposition – 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense. Permit to allow smoking can be suspended for 4 or more violations in 36 month period Criminal penalty - 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense.

Public Places

	1995 Ordinance	Proposed Ordinance
Public Places *including but not limited to: licensed childcare facilities; educational facilities; public restrooms; waiting rooms; public elevators; common rooms in publicly-assisted housing; laundromats; libraries; museums; retail food establishments; indoor sports arenas; theaters and concert halls; halls and rooms used for public meetings; public areas of bank and ATM lobbies*	Smoking is prohibited in any indoor public place except for designated smoking areas (see below for requirements). Areas which cannot be designated as a smoking area include hallways, entranceways, stairwells, waiting areas, restrooms, elevators and other areas as declared by federal, state or local agencies. Smoking area must be properly ventilated and posted.	Same Smoking areas may be designated in an area not open to the public provided that area is enclosed and properly ventilated, that a comparable non-smoking area is provided and that smoking is not prohibited by state law, fire regulations or other sections of this regulation.
Retail stores *including stores which sell personal services*	Smoking is prohibited; smoking section may be designated in an area not open to the public	Same
Health care facilities	Smoking is prohibited; a smoking area may be designated in hospitals, clinics, nursing homes, long-term facilities and rooms where support groups meet if approved by Commissioner or designee.	Smoking is prohibited; a smoking area may be designated where psychiatric support groups meet if approved by Commissioner or designee. Smoking may be permitted in private rooms of nursing homes or long-term facilities if requested by patients.
Taxis, limousine, livery services	Smoking prohibited whenever passengers are being transported.	Smoking prohibited
Malls	Smoking prohibited.	Same
Public parks	Smoking prohibited, includes school grounds & "totlots"	Same
Schools, municipal buildings	Smoking prohibited.	Same

Inns, motels and hotels	Smoking prohibited in lobbies, stairwells, halls, entranceways and restrooms. Smoking allowed in meeting rooms when used for private functions if room is properly ventilated. Smoking allowed in rooms rented to guests.	Same (includes bed and breakfasts and lodging homes) Same Smoking allowed in rooms rented to guests that are designated as smoking rooms.
Variance	May apply to the Public Health Commissioner or designee to waive a provision.	May apply to the Public Health Commissioner or designee to waive a provision.
Exceptions	1. private residences 2. dormitories 3. Hotel rooms designated as smoking 4. Hotel conference/meeting rooms 5. Private nursing home rooms when requested 6. tobacco stores/smokeshops 7. performers on stage 8. religious ceremonies if smoking is part of the ritual. 9. private clubs, except when used for events open to the public 10. charity beano games 11. Psychiatric support groups with variance from Commissioner 12. places of incarceration/detention 13. employee smoking lounges with conditions 14. bowling alleys	1. except when used as a licensed childcare or healthcare facility 2. if students request smoking room 3. same 4. same 5. same 6. same 7. same 8.same 9. same 10. same 11. same 12. same 13. transferred from worksite section 14. smokefree
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense.	Non-criminal - 1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

ORDINANCE NO. 1225

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

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: 1992 election returns demonstrate that more than 60% 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: Evidence demonstrates that tobacco in extremely addictive; and

WHEREAS: 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS 82% of all smokers begin smoking as teenagers; 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: 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 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 require access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a disability; now therefore be it

RESOLVED: That 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

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

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

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

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

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

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

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

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

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within

twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in 8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

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

City: the City of Cambridge.

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

Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.

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

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

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

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child

care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.

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

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

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

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

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

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

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

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

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;
(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;
(6) Smokeshops;
(7) Performers upon the stage, provided that the smoking is part of a theatrical production;
(8) Religious ceremonies where smoking is part of the ritual;
(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;
(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;
(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;
(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;
(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and
(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:
Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner of Health or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:
(1) The efforts made by the entity to comply with the ordinances;
(2) Whether granting the waiver will result in an appreciable danger to the public health;
(3) Whether enforcement of the ordinance will cause manifest injustice to the entity.

8.28.100. Violations and Penalties:
A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars

($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.110 Definitions for restrictions on smoking in restaurants

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*
Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code and Cambridge municipal code.
License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within the City of Cambridge.
Restaurant: Any eating or entertainment establishment which possesses a Common Victualer License under the provisions of M.G.L. c. 140. In addition, the establishment could hold a beer and wine or all alcohol pouring license.
Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.
Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display **at the entry(s) of the premises and** upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

(9) A sign provided by the Cambridge Public Health Department must be placed on all entryways that indicates that smoking is allowed in the establishment.

(10) ***The permit which indicates percentage of seats in the no smoking and smoking area of the restaurant and conditions for exception must be displayed near the main entrance and made visible and legible for patrons entering the establishment.***

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking.*

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 Implementation:

This revised ordinance will be effective June 1, 1999.

In City Council June 21, 1999.
Passed to be Ordained as amended by a yea and nay vote:-
Yeas 8; Nays 1; Absent 0.

ATTEST:-
D. Margaret Drury
City Clerk

Sullivan stated that she believes that when the license is transferred, that designation ends.

Arthur Goldberg stated that when the business is sold, if the old business had a permit, the new restaurant can apply for a permit. If the prior business did not have a permit, the new owner cannot apply for a permit.

Councillor Born asked how the Health Department will know when the restaurant has been sold. Ms. Sullivan stated that Inspectional Services Department or the License Commission will notify the Department of Public Health (DPH).

Councillor Davis asked why, given the testimony of Mr. Repace, the Department of Public Health is not recommending that restaurants be 100% smoke free. Mr. Cox stated that the Health Department first wanted to propose 100% smoke free, but they realized that they would have a very difficult time in getting the proposal adopted as law. Mr. Cox stated that the Public Health Department will continue to work toward the goal of 100% smoke free restaurants in Cambridge.

Councillor Davis asked what percentage of restaurants in Cambridge will still have areas where there is smoking. Ms. Sullivan stated that there are approximately four hundred twenty restaurants in Cambridge. The Department of Public Health estimates about three hundred fifty will be smoke free and approximately seventy to one hundred will apply for permits. About one hundred eighty-four restaurants have liquor licenses; not all restaurants with liquor licenses have separate bar areas.

Councillor Davis asked how Cambridge compares with surrounding communities. Ms. Sullivan stated that many of the nearby towns are smoke free. With regard to the cities, Somerville and Boston, Somerville is fairly similar. Regarding Boston, the restaurant portion is similar.

Councillor Davis invited public testimony from members of the public in support of the proposed ordinance.

Carla Silva, Massachusetts Alliance of Portuguese Speakers, stated that members of the Youth Program would like to speak. The following members of the Youth Program provided testimony:

- Taxla, work address at Cambridge Street, spoke in support of smoke restaurants.

- Martha Dyder, 328 Columbia Street, spoke in favor of the proposed ordinance.

- Simmonia Rougio, work address at 1046 Cambridge Street, stated his support for the proposal.

- Elizio Amendes, work address at 1046 Cambridge Street, spoke in support of smoke free restaurants.

- Billy Segal, work address at 1046 Cambridge Street, spoke in favor of smoke free restaurants.

- Lisa Somegeda, work address at 1046 Cambridge Street, spoke in favor of smoke free restaurants.

Allyson Doyle, Tobacco Control Coordinator, Department of Public Health, submitted for the record the results of public surveys in which very high percentages of respondents wanted smoke free restaurants.

Walter Lamb, 57 Ellery Street, spoke in support of the ordinance.

Graham Kelder, 81 Oxford Street, discussed Judge Ostein's decision in which he discounted EPA findings on second hand smoke and noted that there is significant legal analysis and scholarship criticizing this decision .

Edward Sweda, Tobacco Products Liability Project, Northeastern University Law School, spoke in support of the ordinance and highlighted the excellence of Mr. Repace's expert credentials. He stated that Mr. Repace has been under attack by the tobacco lobby because his evidence is so damaging to them. He submitted copies of newspaper articles.

Mark Nahabedian, 66 Prospect Street, spoke in support of smoke free restaurants.

John Clifford, owner of Green Street Grill, spoke in support of the ordinance.

Michelle LoPave, Belmont, spoke in support of smoke free restaurants.

Councillor Davis then invited testimony in opposition.

Jerome Lettvin, 1105 Massachusetts Avenue, spoke in opposition to the ordinance. It is unfair to the minority of smokers.

Stephen Helfer, 3 Crawford Street, spoke in opposition to the ordinance. There are very few coffee shops that still allow smoking.

Mary Moore, health care worker at Mt. Auburn, stated that she opposes allowing smoking in the bar section of restaurants. Without a wall, the smoke will just drift through the room.

Councillor Davis submitted for the record a letter from Elizabeth Van Ranst objecting to allowing smoking in bar areas lacking adequate physical separation from dining areas (**ATTACHMENT C).**

Councillor Born made the following motion that the proposed ordinance, along with the newly proposed amendments submitted at this hearing, be referred to the full City Council.

The motion –

Carried.

Councillor Davis thanked all those present for their attendance.

The meeting was adjourned at 7:10 p.m.

For the Committee,

Henrietta Davis dm

Councillor Henrietta Davis
Chair

051999OrdinancecommitteeMtgTobacco

"A"

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 7A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: The City of Cambridge.
Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code.
Minor: Any individual who is under the age of eighteen (18).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such

hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 Implementation:

This revised ordinance will be effective June 1, 1999.

"B"

THREE PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 7A)

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

C

120 Foster Street
Cambridge, MA 02138
May 16, 1999

The Mayor and City Councillors
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Mayor Duehay and Councillors:

I am unable to attend the Ordinance Committee's May 19th hearing on the latest proposal for dealing with environmental tobacco smoke (ETS) in dining establishments. Hence I am submitting my testimony in writing.

My understanding is that all restaurants without bar areas would be smokefree under this plan but that bar areas could have smoking even without a real separation from the dining area. I wholeheartedly favor the prohibition of smoking in dining areas because it is an advancement from where we are today. However, allowing smoking in bar areas lacking adequate physical separation from dining areas and without strong ventilation pretty much ensures that adjoining dining areas will become smoky, thereby negating their supposed smokefree status.

I would like to see a time frame added to this proposal so that smoking in lounge areas would have a definite life span, say one year, after which time there would be no smoking at all.

ETS is unpleasant, dirty, and, most importantly, carcinogenic. It is bad for customers as well as for employees. It is time Cambridge became more progressive on this matter like other nearby communities. Several years ago I sat in your Chamber while the sitting Councillors discussed and passed a ban on using styrofoam cups in City Hall, to protect the environment. I wish you would demonstrate as great concern for the well being of the populace. Please pass this proposal and then move quickly to rid lounges and adjacent dining areas of ETS.

Sincerely,

Elizabeth Van Ranst

Elizabeth Van Ranst

City of Cambridge

In City Council June 14, 1999

The Ordinance Committee held a public hearing on May 19, 1999, beginning at 5:35 p.m. in the Sullivan Chamber for the purpose of considering proposed amendments to the Smoking Ordinance submitted by the Public Health Department (**ATTACHMENT A**).

Present at the hearing were Councillor Henrietta Davis, Chair of the Committee, Mayor Francis H. Duehay, Councillor Kathleen Leahy Born and City Clerk D. Margaret Drury. Also present were Deputy City Solicitor Don Drisdell, Attorney Arthur Goldberg, City Solicitor's Office; John O'Brien, CEO, Cambridge Health Alliance; Harold Cox, Chief Public Health Officer; Lynn Schoeff, Public Health Department; Allyson Doyle, Public Health Department and Eileen Sullivan, Director, Tri-Cities Tobacco Prevention Program.

Councillor Davis convened the hearing and explained the purpose. She invited John O'Brien, Chief Executive Officer of the Cambridge Health Alliance to begin the presentation. Mr. O'Brien described the work that has gone into developing this proposal.

Mayor Duehay asked about implementation of the requirement in the current ordinance to post a sign as to the percentage of smoking. He stated that if there are going to be establishments where smoking will still be permitted, it would be a good idea to continue to have such a posting.

Harold Cox, Chief Public Health Officer recognized the hard work of Eileen Sullivan, Allyson Doyle and Lynn Schoeff of the Public Health Department and the work of John Clifford, owner of the Green Street Grill. He introduced Mr. Gerald Repace, second hand smoke consultant, who provided a slide presentation of statistical and other information on the dangers of second hand smoke and submitted a copy for the record.

Eileen Sullivan described three proposed amendments to the proposal (**ATTACHMENT B**).

In response to a question from Mr. Cox, Councillor Davis requested that the change suggested by Mayor Duehay be forwarded to her for presentation to the Council on the night that the Council considers ordination.

Councillor Born asked about the proposed amendment for dual use restaurants, where food is incidental to liquor. What happens when the license transfers? Ms.

Committee Report #5

A report from Councillor Henrietta Davis, Chair of the Ordinance Committee, for a public hearing held on May 9, 1999, for the purpose of considering proposed amendments to the Smoking Ordinance submitted by the Public Health Department.

In City Council June 14, 1999

Report Accepted

PLACED ON FILE

THREE PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 7A)

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 7A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

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

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

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

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

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

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Private Club: A nonprofit entity with a paid membership.

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

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

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

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

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

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

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

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

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:
(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.
(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.
(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.
(4) A separate permit is required for each place of business.
(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.
(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.
(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that
(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.
(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D
(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. Violations and Penalties:
A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such

hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 <u>Implementation:</u>

This revised ordinance will be effective June 1, 1999.

Restaurants

	1995 Ordinance	Proposed Ordinance
Restaurants *indoor seating*	Smoking is prohibited except for designated smoking area. Restaurants with fewer than 25 seats are exempt. Smoking area must not comprise more than 50% of seating capacity and should be set up to minimize transfer of smoke to non-smoking areas (using ventilation systems, barriers, etc.) Children under 12 may not be seated in smoking area; from age 12 to 18 may sit in smoking area if accompanied by parent/guardian.	Smoking is prohibited unless restaurant obtains permit to allow smoking from the Cambridge Public Health Department. Establishments that choose to be adult only (ages 18 and older) at all times may designate up to 50% of seating to allow smoking.
Restaurants *outdoor seating*	not regulated	Smoking permitted if outdoor area is not enclosed.
Restaurants *bar area*	Not specifically addressed	Permit to allow smoking if smoking area (25%) is 18+ and bar area is enclosed or defined section with 6 ft barrier
Bars **Dual use** **Restaurants** *in which food is incidental to alcohol*	Exempt	Permit to allow smoking (50%) if establishment is restricted to persons age 18 and older. Permit to allow smoking (50%) during certain hours when food incidental or entertainment and 18+ only Permit to allow smoking (50%)
Nightclubs (Dual use)	Exempt	Permit to allow smoking during time periods in which establishment is restricted to 18 + and certain categories of live entertainment license such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

Function rooms	Smoking permitted if used for private functions.	Same
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Common victualer and liquor licenses may be suspended or revoked after 3 or more violations within a 12 month period. Criminal penalty - fine not exceeding $50 per offense.	Non criminal disposition – 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense. Permit to allow smoking can be suspended for 4 or more violations in 36 month period Criminal penalty - 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense.

5/3/99

COMPARISON OF PROPOSED CAMBRIDGE ORDINANCE TO LOCAL COMMUNITIES

Restaurants

	Cambridge (current)	Cambridge (proposed)	Boston	Brookline	Somerville
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with bar area (same room)	50% nonsmoking section	no smoking in restaurant permit to allow smoking at bar/defined area with 6 feet barrier	no smoking in restaurant smoking permitted at bar/ 6 ft barrier	no smoking	no smoking in restaurant smoking permitted at bar/ 6 ft barrier with variance
Restaurant with bar in separate room	50% nonsmoking section	no smoking in restaurant permit to allow smoking in bar area	no smoking in restaurant smoking permitted at bar	no smoking in restaurant smoking permitted at bar with variance and ventilation	no smoking in restaurant smoking permitted at bar with variance
Bar	smoking permitted	permit to allow smoking if percentage of alcohol is greater than food *or* establishment is only 18 +	smoking permitted	no smoking	smoking permitted
Nightclubs	smoking permitted	permit to allow smoking during certain hours if 18+ and live entertainment	smoking permitted	no smoking	smoking permitted during certain hours if apply for a variance

1/25/99

EXAMPLES OF PROPOSED ORDINANCE AMENDMENT

Mary Chung	no bar	restaurant is smokefree
Algiers Coffeehouse(option 1)	no bar	restaurant is smokefree (all ages welcome)
Algiers Coffeehouse (option 2)	no bar	declare establishment limited to 18 and older at all times; 50% smoking area- *section C*
Sail Loft	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree function room is smoking or smokefree depending on renters of the function room
The Field (option 1)	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	during certain hours when pub menu rather than full menu or entertainment, smoking area is increased to 50% of seating as long as seating is limited to 18 and older *(section E-dual use)*
The Field (option 2)	declare establishment limited to 18 and older at all times; 50% smoking area (total seats- bar and restaurant)-*section C*	
John Harvard Brew House	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree during certain hours when pub menu rather than full menu, smoking area is increased to 50% of seating as long as seating is limited to 18+ *(section E-dual use)*
Green Street Grill	bar (25% or less of total seats) - smoking at all times if seats at bar are limited to 18+ *(sectionA)*	restaurant is smokefree except for hours when live entertainment is offered as long as patrons limited to 18+ *(section F-dual use)*
CanTab Lounge	50% smoking (bar and restaurant seats total) as long as smoking section is limited to 18 and older *(section D)*	smoking allowed during hours when live entertainment is offered as long as patrons limited to 18 and older *(section F-dual use)*

1/25/99

Workplace

	1995 Ordinance	Proposed Ordinance
Prohibition of smoking	Smoking is prohibited in any room normally frequented during the course of employment including work areas, employee lounges/restrooms, conference rooms, hallways.	Smoking in any workplace is prohibited except for designated smoking areas.
Designated smoking area	Employer may provide smoking lounge provided that employees need not enter for any other purpose; that lounge is sealed, vented to the outside and does not re-circulate smoke throughout work areas; and that a smoke-free lounge is provided.	A smoking area may be designated provided that the area is enclosed, smoke is vented to the exterior of the building, and employees need not enter the smoking area. A non-smoking area of comparable size and with comparable amenities must be provided.
Creation of smoking policy		A smoking policy shall be available for viewing.
Posting of areas		Areas must be conspicuously marked
Enforcement	Non-criminal disposition: $25 per violation. Criminal: not exceeding $50 per violation.	1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

1/25/99

Inns, motels and hotels	Smoking prohibited in lobbies, stairwells, halls, entranceways and restrooms. Smoking allowed in meeting rooms when used for private functions if room is properly ventilated. Smoking allowed in rooms rented to guests.	Same (includes bed and breakfasts and lodging homes) Same Smoking allowed in rooms rented to guests that are designated as smoking rooms.
Variance	May apply to the Public Health Commissioner or designee to waive a provision.	May apply to the Public Health Commissioner or designee to waive a provision.
Exceptions	1. private residences 2. dormitories 3. Hotel rooms designated as smoking 4. Hotel conference/meeting rooms 5. Private nursing home rooms when requested 6. tobacco stores/smokeshops 7. performers on stage 8. religious ceremonies if smoking is part of the ritual. 9. private clubs, except when used for events open to the public 10. charity beano games 11. Psychiatric support groups with variance from Commissioner 12. places of incarceration/detention 13. employee smoking lounges with conditions 14. bowling alleys	1. except when used as a licensed childcare or healthcare facility 2. if students request smoking room 3. same 4. same 5. same 6. same 7. same 8.same 9. same 10. same 11. same 12. same 13. transferred from worksite section 14. smokefree
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense.	Non-criminal - 1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

Public Places

	1995 Ordinance	Proposed Ordinance
Public Places *including but not limited to: licensed childcare facilities; educational facilities; public restrooms; waiting rooms; public elevators; common rooms in publicly-assisted housing; laundromats; libraries; museums; retail food establishments; indoor sports arenas; theaters and concert halls; halls and rooms used for public meetings; public areas of bank and ATM lobbies*	Smoking is prohibited in any indoor public place except for designated smoking areas (see below for requirements). Areas which cannot be designated as a smoking area include hallways, entranceways, stairwells, waiting areas, restrooms, elevators and other areas as declared by federal, state or local agencies. Smoking area must be properly ventilated and posted.	Same Smoking areas may be designated in an area not open to the public provided that area is enclosed and properly ventilated, that a comparable non-smoking area is provided and that smoking is not prohibited by state law, fire regulations or other sections of this regulation.
Retail stores *including stores which sell personal services*	Smoking is prohibited; smoking section may be designated in an area not open to the public	Same
Health care facilities	Smoking is prohibited; a smoking area may be designated in hospitals, clinics, nursing homes, long-term facilities and rooms where support groups meet if approved by Commissioner or designee.	Smoking is prohibited; a smoking area may be designated where psychiatric support groups meet if approved by Commissioner or designee. Smoking may be permitted in private rooms of nursing homes or long-term facilities if requested by patients.
Taxis, limousine, livery services	Smoking prohibited whenever passengers are being transported.	Smoking prohibited
Malls	Smoking prohibited.	Same
Public parks	Smoking prohibited, includes school grounds & "totlots"	Same
Schools, municipal buildings	Smoking prohibited.	Same

Youth Access

	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Permit	Tobacco sales permit required (summary)	Same	Dept of Revenue	N/A
Proof of age	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.	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.	N/A	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.
Sale to minors	Prohibited (summary)	Same	Same	Same
Distribution of free samples	Distribution of free products, samples or coupons/vouchers for free or reduced-price tobacco products is prohibited.	Same	N/A	
Packaging of cigarettes	Sale/distribution of single cigarettes or any product not in its original package is prohibited.	Sale/distribution of single cigarettes or any product not in its original package is prohibited. Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.	Dept of Revenue	Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.
Self-service displays	All free-standing self-service displays must be within view of staff at the cash register and no more than 10 feet from a register (summary)	All self-service displays are prohibited. Exception: displays located in facilities in which persons under 18 are not allowed.	N/A	All self-service displays are prohibited. Exception: displays located in Facilities in which persons under 18 are not allowed.

Signs	MGL must be posted (summary)	Same	Same	N/A
	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Vending machines	Vending machines must be equipped with a lock-out device; must be located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	Sale of tobacco products by vending machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	N/A	Sale of tobacco products by vending Machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.
Enforcement - sales permit	Tobacco sales permit may be suspended for 15 days (1 violation), 60 days (2 violations), or revoked (3 violations within 12 months).	Tobacco sales permit may be suspended after 3 violations within 24 months.		
Enforcement - other penalties	Over the counter: 1st offense ($50) 2nd ($100) 3rd/subsequent in 1 year ($300). Vending machine: 1st offense ($100) 2nd offense ($200) 3rd offense ($300) Criminal penalty - fine not exceeding $25 per offense. Non-criminal disposition - $25 per violation.	Sales to minors: 1st offense ($100) 2nd ($200) 3rd/subsequent in 2 years ($300). Other violations may be subject to a fine of $25 per day.	MGL (criminal offense) 1st offense ($100) 2nd offense ($200) 3rd offense ($300)	1st offense – warning 2nd offense - $250 3rd offense - $1,500 4th offense - $5,000 5th offense - $10,000

Secondhand Smoke: The Facts

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

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.
(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.
(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke in bars that allow smoking are between 440-450% higher than in residential settings.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.
(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.
(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

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

Tobacco Control Ordinance Process To Date:
(Included are meetings with the Cambridge business community, elected officials, and some community groups. Additional meetings occurred with Cambridge city departments and the public health community.)

March 1998:

March 10, 1998:	*Tab prints "Smoke Wars; City prepares to re-ignite smoking ban for restaurants, bars"*
March 11, 1998:	**CHA Public Health Sub-Committee meeting to discuss changing smoking ordinance**
March 12, 1998:	*Chronicle prints article "City Mulls Tougher Smoking Laws"*

May 1998:

May 1999:	Cambridge Public Health Department Report "The Facts on ETS" sent to the City Council

July 1998:

Week of July 6:	Mailing sent to all restaurants about restaurant forum
July 9, 1998:	**Meeting with Cambridge Licensee Advisory Board**
July 16, 1998:	**9:00 a.m. and 7:00 p.m. Two Restaurant Forums** (attended by 36 people, 10 restaurants, & 2 hotels)
July 16, 1998:	*Chronicle prints "Proposed smoke ban ignites debate"*
July 21, 1998:	Howard Koh, Commissioner of the MA Department of Public Health, sends "A Cloud Over Our Cities and Towns: What Policy Makers Need to Know about Secondhand Smoke"
Week of July 27:	Mailing sent to all restaurants and retailers about August 5 C.P.H.C. public hearing
July 27, 1998:	Tobacco Control Update , Number 1 is sent to concerned individuals
July 28, 1998:	*Tab prints ad for 8/5 public hearing*
July 30, 1998:	*Chronicle prints ad for 8/5 hearing*

July 30, 1998: *Chronicle prints "Smoking Ban Compromise?"*

August 1998:

August 98 - April 99: Postcard Survey of Public Opinion regarding Smoking in Restaurants

August 5th: **5:30 p.m. Cambridge Public Health Commission Public Hearing at Kennedy Elementary School** (over 70 in attendance)

August 7, 1998: Tobacco Control Update, Number 2 sent to concerned individuals

August 9, 1999: *Globe prints "No-Smoke policy from 25% to 100%"*

September 1998:

September 8, 1998: **Presentation to Harvard Square Business Association**

September 16, 1998: **Initial Meeting of Restaurant Working Group**

October 1998:

October 13, 1998: **Presentation to City Council Health and Hospital Committee**

October 15, 1998: *Chronicle prints story "Health Leaders Eye Strict Smoke Ban"*

October 15, 1998: *Chronicle prints story "The Separation of Smoke and State"*

October 18, 1998: *Globe prints "Smoking Ban Outlined to Council"*

November 1998:

November 10, 1998: Tobacco Control Update, Number 3 sent to concerned individuals

November 17, 1998: *Chronicle full page ad Letter from ACS and health care providers "The time is right for clean indoor air in Cambridge"*

Week of November 23: Mailing to retailers about retailer forum

December 1998:

December - March:	Multi-lingual Opinion Survey in Health Centers
December 1, 1998:	*Tab prints notification of 12/3 Retailer Forum*
December 3, 1998:	**3:00 p.m. Tobacco Retailer Forum** (2 attended)
December 8, 1998:	Individual Visit to Sail Loft Individual Visit to Courtside Individual Visit to Green Street Grill Individual Visit to Middle East
December 10, 1999:	Individual Visit to Harvard Brew House Individual Visit to House of Blues
December 13, 1999:	Individual Visit to Frank's Steakhouse
December 17,1998:	**Restaurant Working Group Meeting**

(In December also visited 12 additional restaurants but did not speak with owner or manager)

January 1999:

January 13, 1999:	Individual Visit with Algier's Coffeehouse
January 19, 1999:	Meeting with Bruce Potter, MRA and John Clifford
January 20, 1999:	Individual Visit to Charles Hotel
January 21, 1999:	**Restaurant Working Group Meeting**
January 25, 1999:	Individual Visit with Lanes & Games Bowling Alley
January 25, 1999:	Individual Visit to Sheraton Commander Hotel

February 1999:

February 1999:	Clarke University Survey of 2,000 Registered Voters in Cambridge
February 1, 1999:	Individual Visit with Royal Sonesta Hotel
February 2, 1999:	Individual Visit with University Park Hotel

April 7, 1999:	Meeting with Councilor Davis
April 7, 1999:	Meeting with Mayor Duehay
April 9, 1999:	Tobacco Control Update, Number 4 sent to concerned individuals
April 15, 1999:	Individual Visit to 8 Portuguese speaking restaurant owners or managers with Portuguese speaker: Individual Visit to Firehouse Grill Individual Visit to Portugalia Individual Visit to Sunset Grill Individual Visit to Middle West Grill Individual Visit to Casal Bakery Individual Visit to Corner Delight Individual Visit to Figueirense Restaurant Individual Visit to Atasca
April 20, 1999:	Meeting with Councilor Reeves
April 20, 1999:	Meeting with Councilor Triantafillou
April 20, 1999:	Meeting with Councilor Russell
April 20, 1999:	Meeting with Deputy City Manager
April 20, 1999:	Submitted Response to City Council Order
April 21, 1999:	**Presentation to CHA Joint Board of Health**
April 21, 1999:	**Presentation to CHA Board of Trustees**
Week of April 26:	Mailing to 17 restaurants where food is incidental to alcohol
April 26, 1999:	City Council to refer to both Health & Hospital and Ordinance Committees
April 28, 1999:	Meeting with Councilor Galluccio
April 29, 1999:	*Chronicle prints article "Smoking ban compromise proposed"*
April 30, 1999:	Meeting with Councilor Toomey

May 1999:

May 3, 1999:	Meeting with Councilor Sullivan
May 4, 1999:	*Information on proposed changes and Health and Hospital meeting included in news reports on WBUR/NPR*
May 4, 1999:	**Cambridge City Council Health And Hospital Committee Meeting**
May 6, 1999	Mailing to 17 restaurants in which food is incidental to alcohol
May 12, 1999	**Forum: Smoking in Restaurants in which Food is Incidental to Alcohol** (6 restaurants attended)
May 19, 1999	**Ordinance Committee Hearing**

Key:

Bold: Meetings or presentations to groups or organizations
Italic: Information appeared in one of the newspapers that serve Cambridge
Underline: Mass mailings to restaurants and retailers regarding proposed changes

18 group meetings or public presentations
55 individual visits to restaurants
7 mass mailings to restaurants and/or retailers regarding proposed changes
16 media mentions of proposed changes
3 public opinion surveys

THREE PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 7A)

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 7A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

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

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

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

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

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

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Private Club: A nonprofit entity with a paid membership.

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

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

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

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

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

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

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

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

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:
(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.
(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.
(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.
(4) A separate permit is required for each place of business.
(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.
(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.
(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that
(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.
(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D
(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. Violations and Penalties:
A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such

hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 <u>Implementation:</u>

This revised ordinance will be effective June 1, 1999.

Restaurants

	1995 Ordinance	Proposed Ordinance
Restaurants *indoor seating*	Smoking is prohibited except for designated smoking area. Restaurants with fewer than 25 seats are exempt. Smoking area must not comprise more than 50% of seating capacity and should be set up to minimize transfer of smoke to non-smoking areas (using ventilation systems, barriers, etc.) Children under 12 may not be seated in smoking area; from age 12 to 18 may sit in smoking area if accompanied by parent/guardian.	Smoking is prohibited unless restaurant obtains permit to allow smoking from the Cambridge Public Health Department. Establishments that choose to be adult only (ages 18 and older) at all times may designate up to 50% of seating to allow smoking.
Restaurants *outdoor seating*	not regulated	Smoking permitted if outdoor area is not enclosed.
Restaurants *bar area*	Not specifically addressed	Permit to allow smoking if smoking area (25%) is 18+ and bar area is enclosed or defined section with 6 ft barrier
Bars **Dual use** **Restaurants** *in which food is incidental to alcohol*	Exempt	Permit to allow smoking (50%) if establishment is restricted to persons age 18 and older. Permit to allow smoking (50%) during certain hours when food incidental or entertainment and 18+ only Permit to allow smoking (50%)
Nightclubs (Dual use)	Exempt	Permit to allow smoking during time periods in which establishment is restricted to 18 + and certain categories of live entertainment license such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

Function rooms	Smoking permitted if used for private functions.	Same
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Common victualer and liquor licenses may be suspended or revoked after 3 or more violations within a 12 month period. Criminal penalty - fine not exceeding $50 per offense.	Non criminal disposition – 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense. Permit to allow smoking can be suspended for 4 or more violations in 36 month period Criminal penalty - 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense.

5/3/99

COMPARISON OF PROPOSED CAMBRIDGE ORDINANCE TO LOCAL COMMUNITIES

Restaurants

	Cambridge (current)	Cambridge (proposed)	Boston	Brookline	Somerville
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with bar area (same room)	50% nonsmoking section	no smoking in restaurant permit to allow smoking at bar/defined area with 6 feet barrier	no smoking in restaurant smoking permitted at bar/ 6 ft barrier	no smoking	no smoking in restaurant smoking permitted at bar/ 6 ft barrier with variance
Restaurant with bar in separate room	50% nonsmoking section	no smoking in restaurant permit to allow smoking in bar area	no smoking in restaurant smoking permitted at bar	no smoking in restaurant smoking permitted at bar with variance and ventilation	no smoking in restaurant smoking permitted at bar with variance
Bar	smoking permitted	permit to allow smoking if percentage of alcohol is greater than food *or* establishment is only 18 +	smoking permitted	no smoking	smoking permitted
Nightclubs	smoking permitted	permit to allow smoking during certain hours if 18+ and live entertainment	smoking permitted	no smoking	smoking permitted during certain hours if apply for a variance

1/25/99

EXAMPLES OF PROPOSED ORDINANCE AMENDMENT

Mary Chung	no bar	restaurant is smokefree
Algiers Coffeehouse(option 1)	no bar	restaurant is smokefree (all ages welcome)
Algiers Coffeehouse (option 2)	no bar	declare establishment limited to 18 and older at all times; 50% smoking area- *section C*
Sail Loft	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree function room is smoking or smokefree depending on renters of the function room
The Field (option 1)	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	during certain hours when pub menu rather than full menu or entertainment, smoking area is increased to 50% of seating as long as seating is limited to 18 and older *(section E-dual use)*
The Field (option 2)	declare establishment limited to 18 and older at all times; 50% smoking area (total seats- bar and restaurant)-*section C*	
John Harvard Brew House	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree during certain hours when pub menu rather than full menu, smoking area is increased to 50% of seating as long as seating is limited to 18+ *(section E-dual use)*
Green Street Grill	bar (25% or less of total seats) - smoking at all times if seats at bar are limited to 18+ *(sectionA)*	restaurant is smokefree except for hours when live entertainment is offered as long as patrons limited to 18+ *(section F-dual use)*
CanTab Lounge	50% smoking (bar and restaurant seats total) as long as smoking section is limited to 18 and older *(section D)*	smoking allowed during hours when live entertainment is offered as long as patrons limited to 18 and older *(section F-dual use)*

Workplace

	1995 Ordinance	Proposed Ordinance
Prohibition of smoking	Smoking is prohibited in any room normally frequented during the course of employment including work areas, employee lounges/restrooms, conference rooms, hallways.	Smoking in any workplace is prohibited except for designated smoking areas.
Designated smoking area	Employer may provide smoking lounge provided that employees need not enter for any other purpose; that lounge is sealed, vented to the outside and does not re-circulate smoke throughout work areas; and that a smoke-free lounge is provided.	A smoking area may be designated provided that the area is enclosed, smoke is vented to the exterior of the building, and employees need not enter the smoking area. A non-smoking area of comparable size and with comparable amenities must be provided.
Creation of smoking policy		A smoking policy shall be available for viewing.
Posting of areas		Areas must be conspicuously marked
Enforcement	Non-criminal disposition: $25 per violation. Criminal: not exceeding $50 per violation.	1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

1/25/99

Public Places

	1995 Ordinance	Proposed Ordinance
Public Places *including but not limited to: licensed childcare facilities; educational facilities; public restrooms; waiting rooms; public elevators; common rooms in publicly-assisted housing; laundromats; libraries; museums; retail food establishments; indoor sports arenas; theaters and concert halls; halls and rooms used for public meetings; public areas of bank and ATM lobbies*	Smoking is prohibited in any indoor public place except for designated smoking areas (see below for requirements). Areas which cannot be designated as a smoking area include hallways, entranceways, stairwells, waiting areas, restrooms, elevators and other areas as declared by federal, state or local agencies. Smoking area must be properly ventilated and posted.	Same Smoking areas may be designated in an area not open to the public provided that area is enclosed and properly ventilated, that a comparable non-smoking area is provided and that smoking is not prohibited by state law, fire regulations or other sections of this regulation.
Retail stores *including stores which sell personal services*	Smoking is prohibited; smoking section may be designated in an area not open to the public	Same
Health care facilities	Smoking is prohibited; a smoking area may be designated in hospitals, clinics, nursing homes, long-term facilities and rooms where support groups meet if approved by Commissioner or designee.	Smoking is prohibited; a smoking area may be designated where psychiatric support groups meet if approved by Commissioner or designee. Smoking may be permitted in private rooms of nursing homes or long-term facilities if requested by patients.
Taxis, limousine, livery services	Smoking prohibited whenever passengers are being transported.	Smoking prohibited
Malls	Smoking prohibited.	Same
Public parks	Smoking prohibited, includes school grounds & "totlots"	Same
Schools, municipal buildings	Smoking prohibited.	Same

Inns, motels and hotels	Smoking prohibited in lobbies, stairwells, halls, entranceways and restrooms. Smoking allowed in meeting rooms when used for private functions if room is properly ventilated. Smoking allowed in rooms rented to guests.	Same (includes bed and breakfasts and lodging homes) Same Smoking allowed in rooms rented to guests that are designated as smoking rooms.
Variance	May apply to the Public Health Commissioner or designee to waive a provision.	May apply to the Public Health Commissioner or designee to waive a provision.
Exceptions	1. private residences 2. dormitories 3. Hotel rooms designated as smoking 4. Hotel conference/meeting rooms 5. Private nursing home rooms when requested 6. tobacco stores/smokeshops 7. performers on stage 8. religious ceremonies if smoking is part of the ritual. 9. private clubs, except when used for events open to the public 10. charity beano games 11. Psychiatric support groups with variance from Commissioner 12. places of incarceration/detention 13. employee smoking lounges with conditions 14. bowling alleys	1. except when used as a licensed childcare or healthcare facility 2. if students request smoking room 3. same 4. same 5. same 6. same 7. same 8.same 9. same 10. same 11. same 12. same 13. transferred from worksite section 14. smokefree
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense.	Non-criminal - 1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

Youth Access

	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Permit	Tobacco sales permit required (summary)	Same	Dept of Revenue	N/A
Proof of age	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.	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.	N/A	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.
Sale to minors	Prohibited (summary)	Same	Same	Same
Distribution of free samples	Distribution of free products, samples or coupons/vouchers for free or reduced-price tobacco products is prohibited.	Same	N/A	
Packaging of cigarettes	Sale/distribution of single cigarettes or any product not in its original package is prohibited.	Sale/distribution of single cigarettes or any product not in its original package is prohibited. Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.	Dept of Revenue	Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.
Self-service displays	All free-standing self-service displays must be within view of staff at the cash register and no more than 10 feet from a register (summary)	All self-service displays are prohibited. Exception: displays located in facilities in which persons under 18 are not allowed.	N/A	All self-service displays are prohibited. Exception: displays located in Facilities in which persons under 18 are not allowed.

Signs	MGL must be posted (summary)	Same	Same	N/A
	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Vending machines	Vending machines must be equipped with a lock-out device; must be located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	Sale of tobacco products by vending machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	N/A	Sale of tobacco products by vending Machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.
Enforcement - sales permit	Tobacco sales permit may be suspended for 15 days (1 violation), 60 days (2 violations), or revoked (3 violations within 12 months).	Tobacco sales permit may be suspended after 3 violations within 24 months.		
Enforcement - other penalties	Over the counter: 1st offense ($50) 2nd ($100) 3rd/subsequent in 1 year ($300). Vending machine: 1st offense ($100) 2nd offense ($200) 3rd offense ($300) Criminal penalty - fine not exceeding $25 per offense. Non-criminal disposition - $25 per violation.	Sales to minors: 1st offense ($100) 2nd ($200) 3rd/subsequent in 2 years ($300). Other violations may be subject to a fine of $25 per day.	MGL (criminal offense) 1st offense ($100) 2nd offense ($200) 3rd offense ($300)	1st offense – warning 2nd offense - $250 3rd offense - $1,500 4th offense - $5,000 5th offense - $10,000

Secondhand Smoke: The Facts

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

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.
(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.
(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke in bars that allow smoking are between 440-450% higher than in residential settings.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.
(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.
(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

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

Tobacco Control Ordinance Process To Date:
(Included are meetings with the Cambridge business community, elected officials, and some community groups. Additional meetings occurred with Cambridge city departments and the public health community.)

March 1998:

March 10, 1998:	*Tab prints "Smoke Wars; City prepares to re-ignite smoking ban for restaurants, bars"*
March 11, 1998:	**CHA Public Health Sub-Committee meeting to discuss changing smoking ordinance**
March 12, 1998:	*Chronicle prints article "City Mulls Tougher Smoking Laws"*

May 1998:

May 1999:	Cambridge Public Health Department Report "The Facts on ETS" sent to the City Council

July 1998:

Week of July 6:	Mailing sent to all restaurants about restaurant forum
July 9, 1998:	**Meeting with Cambridge Licensee Advisory Board**
July 16, 1998:	**9:00 a.m. and 7:00 p.m. Two Restaurant Forums** (attended by 36 people, 10 restaurants, & 2 hotels)
July 16, 1998:	*Chronicle prints "Proposed smoke ban ignites debate"*
July 21, 1998:	Howard Koh, Commissioner of the MA Department of Public Health, sends "A Cloud Over Our Cities and Towns: What Policy Makers Need to Know about Secondhand Smoke"
Week of July 27:	Mailing sent to all restaurants and retailers about August 5 C.P.H.C. public hearing
July 27, 1998:	Tobacco Control Update , Number 1 is sent to concerned individuals
July 28, 1998:	*Tab prints ad for 8/5 public hearing*
July 30, 1998:	*Chronicle prints ad for 8/5 hearing*

July 30, 1998: *Chronicle prints "Smoking Ban Compromise?"*

August 1998:

August 98 - April 99: Postcard Survey of Public Opinion regarding Smoking in Restaurants

August 5th: **5:30 p.m. Cambridge Public Health Commission Public Hearing at Kennedy Elementary School** (over 70 in attendance)

August 7, 1998: Tobacco Control Update, Number 2 sent to concerned individuals

August 9, 1999: *Globe prints "No-Smoke policy from 25% to 100%"*

September 1998:

September 8, 1998: **Presentation to Harvard Square Business Association**

September 16, 1998: **Initial Meeting of Restaurant Working Group**

October 1998:

October 13, 1998: **Presentation to City Council Health and Hospital Committee**

October 15, 1998: *Chronicle prints story "Health Leaders Eye Strict Smoke Ban"*

October 15, 1998: *Chronicle prints story "The Separation of Smoke and State"*

October 18, 1998: *Globe prints "Smoking Ban Outlined to Council"*

November 1998:

November 10, 1998: Tobacco Control Update, Number 3 sent to concerned individuals

November 17, 1998: *Chronicle full page ad Letter from ACS and health care providers "The time is right for clean indoor air in Cambridge"*

Week of November 23: Mailing to retailers about retailer forum

December 1998:

December - March:	Multi-lingual Opinion Survey in Health Centers
December 1, 1998:	*Tab prints notification of 12/3 Retailer Forum*
December 3, 1998:	**3:00 p.m. Tobacco Retailer Forum** (2 attended)
December 8, 1998:	Individual Visit to Sail Loft Individual Visit to Courtside Individual Visit to Green Street Grill Individual Visit to Middle East
December 10, 1999:	Individual Visit to Harvard Brew House Individual Visit to House of Blues
December 13, 1999:	Individual Visit to Frank's Steakhouse
December 17,1998:	**Restaurant Working Group Meeting**

(In December also visited 12 additional restaurants but did not speak with owner or manager)

January 1999:

January 13, 1999:	Individual Visit with Algier's Coffeehouse
January 19, 1999:	Meeting with Bruce Potter, MRA and John Clifford
January 20, 1999:	Individual Visit to Charles Hotel
January 21, 1999:	**Restaurant Working Group Meeting**
January 25, 1999:	Individual Visit with Lanes & Games Bowling Alley
January 25, 1999:	Individual Visit to Sheraton Commander Hotel

February 1999:

February 1999:	Clarke University Survey of 2,000 Registered Voters in Cambridge
February 1, 1999:	Individual Visit with Royal Sonesta Hotel
February 2, 1999:	Individual Visit with University Park Hotel

February 2, 1999:	Individual Visit with Cambridge Marriott Hotel
February 3, 1999:	**Presentation to Cambridge Licensee Advisory Board**
February 4, 1999:	*Cambridge Chronicle prints notification of 2/23 Retailer Forum*
Week of February 8:	Mailing to all restaurants and retailers regarding forums
February 8, 1999:	Individual Visit to Hyatt Regency Hotel
February 10, 1999:	**Presentation to CHA Cambridge Public Health Sub-Committee**
February 18, 1999:	*Cambridge Chronicle prints notification of Restaurant Forum*
February 19, 1999:	Individual Visits to North Cambridge Establishments regarding upcoming forums: Cambridge Common, Fraser's, Forest Café, Temple Bar, Harvard House of Pizza, Changso Restaurant, Cottonwood Café, Christopher's, Kaya Restaurant, Porter Square Café, Newtowne Grille, Andy's Diner, Porterhouse Café, Maharaja Restaurant, Sun's Café, Corner Restaurant, Garbun Chinese Restaurant, Jose's Mexican Food
February 23, 1999:	**3:00 p.m. Tobacco Retailer Forum** (4 attended)
February 25, 1999:	Forums canceled because of snow. However, 10 people did attend and were given information

March 1999:

Week of March 1:	Mailing sent to all restaurants about rescheduled forum
March 2, 1999:	Meeting with City Solicitor
March 11, 1999:	**3:00 p.m. Restaurant Forum** (19 attended)
March 18, 1999:	Individual Visit with Café Pomplano
March 25, 1999:	Individual Visit with Casa Portugal

April 1999:

April 6, 1999:	Meeting with Councilor Born

April 7, 1999:	Meeting with Councilor Davis
April 7, 1999:	Meeting with Mayor Duehay
April 9, 1999:	Tobacco Control Update, Number 4 sent to concerned individuals
April 15, 1999:	Individual Visit to 8 Portuguese speaking restaurant owners or managers with Portuguese speaker: Individual Visit to Firehouse Grill Individual Visit to Portugalia Individual Visit to Sunset Grill Individual Visit to Middle West Grill Individual Visit to Casal Bakery Individual Visit to Corner Delight Individual Visit to Figueirense Restaurant Individual Visit to Atasca
April 20, 1999:	Meeting with Councilor Reeves
April 20, 1999:	Meeting with Councilor Triantafillou
April 20, 1999:	Meeting with Councilor Russell
April 20, 1999:	Meeting with Deputy City Manager
April 20, 1999:	Submitted Response to City Council Order
April 21, 1999:	**Presentation to CHA Joint Board of Health**
April 21, 1999:	**Presentation to CHA Board of Trustees**
Week of April 26:	Mailing to 17 restaurants where food is incidental to alcohol
April 26, 1999:	City Council to refer to both Health & Hospital and Ordinance Committees
April 28, 1999:	Meeting with Councilor Galluccio
April 29, 1999:	*Chronicle prints article "Smoking ban compromise proposed"*
April 30, 1999:	Meeting with Councilor Toomey

May 1999:

May 3, 1999:	Meeting with Councilor Sullivan
May 4, 1999:	*Information on proposed changes and Health and Hospital meeting included in news reports on WBUR/NPR*
May 4, 1999:	**Cambridge City Council Health And Hospital Committee Meeting**
May 6, 1999	Mailing to 17 restaurants in which food is incidental to alcohol
May 12, 1999	**Forum: Smoking in Restaurants in which Food is Incidental to Alcohol** (6 restaurants attended)
May 19, 1999	**Ordinance Committee Hearing**

Key:

Bold: Meetings or presentations to groups or organizations
Italic: Information appeared in one of the newspapers that serve Cambridge
Underline: Mass mailings to restaurants and retailers regarding proposed changes

18 group meetings or public presentations
55 individual visits to restaurants
7 mass mailings to restaurants and/or retailers regarding proposed changes
16 media mentions of proposed changes
3 public opinion surveys

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CITY OF CAMBRIDGE
Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

April 26, 1999

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: ***Falb Amendment--Planning Board Request for Legal Opinion***

Dear Mr. Healy:

In response to the Planning Board's request for legal advice regarding the proposed zoning amendment to ban through trucks during night-time hours, I am providing a copy of a legal opinion prepared for the City Council last year. The opinion was done by Professor Richard Fallon of the Harvard Law School.

In essence, Professor Fallon concludes that a nighttime truck restriction on all Cambridge streets would face serious legal challenges under federal statutory and constitutional law. In addition, the restriction could be challenged as incompatible with applicable state law.

Proponents of the Falb Amendment rely heavily on the case of *New Hampshire Motor Transport Association v. Plaistow* , 67 F. 3d 326, rehearing denied, 67 F. 3d 333 (1st Cir., 1995), cert. denied, 116 S. Ct. 1352 (1996). Professor Fallon acknowledges that the *Plaistow* decision clearly establishes that federal law does not absolutely forbid the enforcement of municipal zoning regulations that reasonably restrict truck traffic in order to protect interests in residential peace and tranquility. As Professor Fallon points out, however, there are significant differences between the circumstances in *Plaistow* and the proposed city-wide truck ban.

The *Plaistow* case deals with a truck terminal, situated between five and six miles from Interstate 495 in New Hampshire. The terminal is the destination for large trucks from around the country dropping off freight to be delivered in New England. Trucks exit the interstate, travel on two New Hampshire state highways, and finally drive along

roughly 2000 feet of private way. The first portion of the private way lies in a Plaistow, New Hampshire residential zone.

After receiving complaints about noise from nighttime truck traffic, Plaistow officials sued the terminal's owner in state court alleging that the nighttime operations violated a town zoning ordinance prohibiting land uses that "may be obnoxious or injurious by reason of the production or emission of odors, dust, smoke, refuse matter, fumes, noise, vibration, or other similar conditions, or that are dangerous to the comfort, peace, enjoyment, health, or safety of the community." 67 F. 3d at 328. Pursuant to this general provision of the existing zoning ordinance, the town sued the owner of the truck terminal in state court and eventually obtained an injunction under which no trucks may arrive at or depart from the terminal between 11:00 p.m. and 5:00 a.m. The injunction permits two trucks to arrive or depart between 9:00 and 11:00 p.m., and three trucks to arrive or depart between 5:00 and 6:00 a.m.. There are no restrictions between 6:00 a.m. and 9:00 p.m.

The New Hampshire Motor Transportation Association brought a separate suit in federal court challenging the state court's injunction. The federal lawsuit challenged the injunction pursuant to several federal statutes and the commerce clause of the constitution. The federal district court upheld the state court action and the First Circuit Court of Appeals affirmed. Professor Fallon details the analysis of the court of appeals.

Some differences between the *Plaistow* case and the proposal contained in the Falb Amendment are:

First, in *Plaistow* there was no zoning amendment specifically targeting trucks.

Second, *Plaistow* involved a narrowly targeted application of a city zoning ordinance to a single, private road in a single residential neighborhood, following a trial in a state court with specific factual findings showing a disruption of tranquility within that neighborhood. The Falb amendment proposes a city-wide ban on all streets, necessarily lacking the detailed level of fact-specific findings present in *Plaistow*. The federal statutory and constitutional analysis done by the court in *Plaistow* turns essentially on the question whether the local regulation is unreasonable or unnecessary or excessive. Each of these standards requires an assessment of the factual basis for the regulation. As Professor Fallon notes, this difference in posture between the cases makes reliance on the *Plaistow* decision as a support for a city-wide ban at best risky.

Third, the court noted that the challengers in *Plaistow* had made a cursory argument that actually waived the factual issues on which a challenge to the ordinance ultimately had to depend. As Professor Fallon notes, a city-wide ban is likely to provoke a more industrious and savvy challenge than occurred in *Plaistow*.

Fourth, the limited scope of the restriction in *Plaistow*, and the limited record from the state court action, supported the conclusion of reasonableness of the regulation under the federal regulatory scheme. In general, however, that scheme discourages 'balkanization" of commerce regulations, and Professor Fallon notes that a city-wide ban,

with the potential for several adjoining communities to join in, would likely trigger a higher level of scrutiny than the single stretch of road in the *Plaistow* case.

Fifth, in *Plaistow* there is no mention of any New Hampshire state statutes or regulations relating to the case. The Falb Amendment may well implicate the provisions of M.G.L. c. 85, §2. Under that statute any local regulation or ordinance which excludes motor vehicles from state highways is invalid. There are several such highways that run partially through the city, and such an ordinance provision would appear to be invalid as applied to those highways.

In addition, M.G.L. c. 85, §2 provides that any rule, regulation, order, or ordinance of a city "...made or promulgated relative to or in connection with the erection or maintenance of signs, traffic control devices, school zones, parking meters, or markings on any way within its control shall take effect...' without MHD approval, except that such a regulation or ordinance shall not take effect until approved in writing by the MHD if made in relation to:

(1) any way at its intersection or junction with a state highway;
(2) any project which is or was federally funded;
...
(4) any sign excluding heavy commercial vehicles;
...
(7) any rule, regulation, order, ordinance or by-law of a city or town which when made or promulgated would exclude motor vehicle travel on any existing way which connects one city or town with another, unless such rule, regulation, order, ordinance, or by-law was promulgated in compliance with the following: (a) the rule-making body of the city or town initiating such rule, regulation, order, ordinance or by-law gives written notice of such action to the chief executive officer of the abutting city, town or county into which the said way extends, and (b) a public hearing is held by the city, town or county initiating such alteration, relocation, or discontinuance, public notice of which must be published for each of the two weeks preceding such hearing in a newspaper of general circulation in the abutting city, town or county into which the said way extends, and (c) after concurrence in writing by the chief executive officer of the abutting city or town into which the said way extends or his designee.

The statute provides that maintenance of any of the "traffic control devices" without requesting and obtaining the required approval will authorize the MHD to "...withhold or withdraw the unexpended balance of funds assigned to the said city..." under statutes which distribute federal and state highway improvement funds to the City.

Chapter 85, §2 is not a model of clarity, and there have been no cases interpreting its provisions in any manner helpful to this analysis. It may be possible to read the statute as only prohibiting the erection of signs. The proponents of the Falb Amendment favor this view, and argue that a zoning amendment need not be posted by signage, hence there would technically be no violation of the statute in adopting the amendment. Attempting a city-wide nighttime truck ban without signage would at least complicate the ability to

enforce the ban, since vehicles are generally permitted on public streets unless those streets are properly posted to exclude them, raising a potential due process problem. Setting aside for the moment the due process issues, however, I think there is a significant risk that a court could interpret the statute as prohibiting the ordinance itself, without regard to the posting of signs. Chapter 85 seems to reflect a legislative intent to require centralized, MHD approval of regulations designed to exclude, among other things, heavy commercial vehicles. Our experience with the MHD on these issues demonstrates that they tend to guard against the proliferation of local exclusions, perhaps on the assumption that all communities would like to exclude trucks if possible. Use of the zoning power to accomplish something that c. 85 would not permit will likely draw a heightened scrutiny by the courts, with an uncertain outcome.

As Professor Fallon points out, City regulations that restrict nighttime traffic only on exclusively residential streets would at least have better prospects of surviving legal challenge. Such a restriction would come within the specific holding of the *Plaistow* decision as to federal law requirements. There would remain the question whether state statutory requirements such as those contained in M.G.L. c. 85, §2 might still lead to a different result, and it would be best if any such regulation were approved by the MHD.

Please let me know if I can be of further assistance in this matter.

Very truly yours,

Russell B. Higley

cc. Rich Rossi
Beth Rubenstein
Les Barber
Nancy Glowa

THREE PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 7A)

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 7A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

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

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking*.

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than ~~100 as determined by the Cambridge Fire~~ Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such

hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 Implementation:

This revised ordinance will be effective June 1, 1999.

Restaurants

	1995 Ordinance	Proposed Ordinance
Restaurants *indoor seating*	Smoking is prohibited except for designated smoking area. Restaurants with fewer than 25 seats are exempt. Smoking area must not comprise more than 50% of seating capacity and should be set up to minimize transfer of smoke to non-smoking areas (using ventilation systems, barriers, etc.) Children under 12 may not be seated in smoking area; from age 12 to 18 may sit in smoking area if accompanied by parent/guardian.	Smoking is prohibited unless restaurant obtains permit to allow smoking from the Cambridge Public Health Department. Establishments that choose to be adult only (ages 18 and older) at all times may designate up to 50% of seating to allow smoking.
Restaurants *outdoor seating*	not regulated	Smoking permitted if outdoor area is not enclosed.
Restaurants *bar area*	Not specifically addressed	Permit to allow smoking if smoking area (25%) is 18+ and bar area is enclosed or defined section with 6 ft barrier
Bars **Dual use** **Restaurants** *in which food is incidental to alcohol*	Exempt	Permit to allow smoking (50%) if establishment is restricted to persons age 18 and older. Permit to allow smoking (50%) during certain hours when food incidental or entertainment and 18+ only Permit to allow smoking (50%)
Nightclubs (Dual use)	Exempt	Permit to allow smoking during time periods in which establishment is restricted to 18 + and certain categories of live entertainment license such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

Function rooms	Smoking permitted if used for private functions.	Same
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Common victualer and liquor licenses may be suspended or revoked after 3 or more violations within a 12 month period. Criminal penalty - fine not exceeding $50 per offense.	Non criminal disposition – 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense. Permit to allow smoking can be suspended for 4 or more violations in 36 month period Criminal penalty - 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense.

5/3/99

COMPARISON OF PROPOSED CAMBRIDGE ORDINANCE TO LOCAL COMMUNITIES

Restaurants

	Cambridge (current)	Cambridge (proposed)	Boston	Brookline	Somerville
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with bar area (same room)	50% nonsmoking section	no smoking in restaurant permit to allow smoking at bar/defined area with 6 feet barrier	no smoking in restaurant smoking permitted at bar/ 6 ft barrier	no smoking	no smoking in restaurant smoking permitted at bar/ 6 ft barrier with variance
Restaurant with bar in separate room	50% nonsmoking section	no smoking in restaurant permit to allow smoking in bar area	no smoking in restaurant smoking permitted at bar	no smoking in restaurant smoking permitted at bar with variance and ventilation	no smoking in restaurant smoking permitted at bar with variance
Bar	smoking permitted	permit to allow smoking if percentage of alcohol is greater than food *or* establishment is only 18 +	smoking permitted	no smoking	smoking permitted
Nightclubs	smoking permitted	permit to allow smoking during certain hours if 18+ and live entertainment	smoking permitted	no smoking	smoking permitted during certain hours if apply for a variance

1/25/99

EXAMPLES OF PROPOSED ORDINANCE AMENDMENT

Mary Chung	no bar	restaurant is smokefree
Algiers Coffeehouse(option 1)	no bar	restaurant is smokefree (all ages welcome)
Algiers Coffeehouse (option 2)	no bar	declare establishment limited to 18 and older at all times; 50% smoking area- *section C*
Sail Loft	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree function room is smoking or smokefree depending on renters of the function room
The Field (option 1)	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	during certain hours when pub menu rather than full menu or entertainment, smoking area is increased to 50% of seating as long as seating is limited to 18 and older *(section E-dual use)*
The Field (option 2)	declare establishment limited to 18 and older at all times; 50% smoking area (total seats- bar and restaurant)-*section C*	
John Harvard Brew House	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree during certain hours when pub menu rather than full menu, smoking area is increased to 50% of seating as long as seating is limited to 18+ *(section E-dual use)*
Green Street Grill	bar (25% or less of total seats) - smoking at all times if seats at bar are limited to 18+ *(sectionA)*	restaurant is smokefree except for hours when live entertainment is offered as long as patrons limited to 18+ *(section F-dual use)*
CanTab Lounge	50% smoking (bar and restaurant seats total) as long as smoking section is limited to 18 and older *(section D)*	smoking allowed during hours when live entertainment is offered as long as patrons limited to 18 and older *(section F-dual use)*

1/25/99

Workplace

	1995 Ordinance	Proposed Ordinance
Prohibition of smoking	Smoking is prohibited in any room normally frequented during the course of employment including work areas, employee lounges/restrooms, conference rooms, hallways.	Smoking in any workplace is prohibited except for designated smoking areas.
Designated smoking area	Employer may provide smoking lounge provided that employees need not enter for any other purpose; that lounge is sealed, vented to the outside and does not re-circulate smoke throughout work areas; and that a smoke-free lounge is provided.	A smoking area may be designated provided that the area is enclosed, smoke is vented to the exterior of the building, and employees need not enter the smoking area. A non-smoking area of comparable size and with comparable amenities must be provided.
Creation of smoking policy		A smoking policy shall be available for viewing.
Posting of areas		Areas must be conspicuously marked
Enforcement	Non-criminal disposition: $25 per violation. Criminal: not exceeding $50 per violation.	1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

1/25/99

Inns, motels and hotels	Smoking prohibited in lobbies, stairwells, halls, entranceways and restrooms. Smoking allowed in meeting rooms when used for private functions if room is properly ventilated. Smoking allowed in rooms rented to guests.	Same (includes bed and breakfasts and lodging homes) Same Smoking allowed in rooms rented to guests that are designated as smoking rooms.
Variance	May apply to the Public Health Commissioner or designee to waive a provision.	May apply to the Public Health Commissioner or designee to waive a provision.
Exceptions	1. private residences 2. dormitories 3. Hotel rooms designated as smoking 4. Hotel conference/meeting rooms 5. Private nursing home rooms when requested 6. tobacco stores/smokeshops 7. performers on stage 8. religious ceremonies if smoking is part of the ritual. 9. private clubs, except when used for events open to the public 10. charity beano games 11. Psychiatric support groups with variance from Commissioner 12. places of incarceration/detention 13. employee smoking lounges with conditions 14. bowling alleys	1. except when used as a licensed childcare or healthcare facility 2. if students request smoking room 3. same 4. same 5. same 6. same 7. same 8.same 9. same 10. same 11. same 12. same 13. transferred from worksite section 14. smokefree
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense.	Non-criminal - 1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

Public Places

	1995 Ordinance	Proposed Ordinance
Public Places *including but not limited to: licensed childcare facilities; educational facilities; public restrooms; waiting rooms; public elevators; common rooms in publicly-assisted housing; laundromats; libraries; museums; retail food establishments; indoor sports arenas; theaters and concert halls; halls and rooms used for public meetings; public areas of bank and ATM lobbies*	Smoking is prohibited in any indoor public place except for designated smoking areas (see below for requirements). Areas which cannot be designated as a smoking area include hallways, entranceways, stairwells, waiting areas, restrooms, elevators and other areas as declared by federal, state or local agencies. Smoking area must be properly ventilated and posted.	Same Smoking areas may be designated in an area not open to the public provided that area is enclosed and properly ventilated, that a comparable non-smoking area is provided and that smoking is not prohibited by state law, fire regulations or other sections of this regulation.
Retail stores *including stores which sell personal services*	Smoking is prohibited; smoking section may be designated in an area not open to the public	Same
Health care facilities	Smoking is prohibited; a smoking area may be designated in hospitals, clinics, nursing homes, long-term facilities and rooms where support groups meet if approved by Commissioner or designee.	Smoking is prohibited; a smoking area may be designated where psychiatric support groups meet if approved by Commissioner or designee. Smoking may be permitted in private rooms of nursing homes or long-term facilities if requested by patients.
Taxis, limousine, livery services	Smoking prohibited whenever passengers are being transported.	Smoking prohibited
Malls	Smoking prohibited.	Same
Public parks	Smoking prohibited, includes school grounds & "totlots"	Same
Schools, municipal buildings	Smoking prohibited.	Same

Youth Access

	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Permit	Tobacco sales permit required (summary)	Same	Dept of Revenue	N/A
Proof of age	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.	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.	N/A	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.
Sale to minors	Prohibited (summary)	Same	Same	Same
Distribution of free samples	Distribution of free products, samples or coupons/vouchers for free or reduced-price tobacco products is prohibited.	Same	N/A	
Packaging of cigarettes	Sale/distribution of single cigarettes or any product not in its original package is prohibited.	Sale/distribution of single cigarettes or any product not in its original package is prohibited. Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.	Dept of Revenue	Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.
Self-service displays	All free-standing self-service displays must be within view of staff at the cash register and no more than 10 feet from a register (summary)	All self-service displays are prohibited. Exception: displays located in facilities in which persons under 18 are not allowed.	N/A	All self-service displays are prohibited. Exception: displays located in Facilities in which persons under 18 are not allowed.

Signs	MGL must be posted (summary)	Same	Same	N/A
	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Vending machines	Vending machines must be equipped with a lock-out device; must be located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	Sale of tobacco products by vending machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	N/A	Sale of tobacco products by vending Machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.
Enforcement - sales permit	Tobacco sales permit may be suspended for 15 days (1 violation), 60 days (2 violations), or revoked (3 violations within 12 months).	Tobacco sales permit may be suspended after 3 violations within 24 months.		
Enforcement - other penalties	Over the counter: 1st offense ($50) 2nd ($100) 3rd/subsequent in 1 year ($300). Vending machine: 1st offense ($100) 2nd offense ($200) 3rd offense ($300) Criminal penalty - fine not exceeding $25 per offense. Non-criminal disposition - $25 per violation.	Sales to minors: 1st offense ($100) 2nd ($200) 3rd/subsequent in 2 years ($300). Other violations may be subject to a fine of $25 per day.	MGL (criminal offense) 1st offense ($100) 2nd offense ($200) 3rd offense ($300)	1st offense – warning 2nd offense - $250 3rd offense - $1,500 4th offense - $5,000 5th offense - $10,000

Secondhand Smoke: The Facts

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

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.
(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.
(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke in bars that allow smoking are between 440-450% higher than in residential settings.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.
(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.
(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

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

Tobacco Control Ordinance Process To Date:
(Included are meetings with the Cambridge business community, elected officials, and some community groups. Additional meetings occurred with Cambridge city departments and the public health community.)

March 1998:

March 10, 1998:	*Tab prints "Smoke Wars; City prepares to re-ignite smoking ban for restaurants, bars"*
March 11, 1998:	**CHA Public Health Sub-Committee meeting to discuss changing smoking ordinance**
March 12, 1998:	*Chronicle prints article "City Mulls Tougher Smoking Laws"*

May 1998:

May 1999:	Cambridge Public Health Department Report "The Facts on ETS" sent to the City Council

July 1998:

Week of July 6:	Mailing sent to all restaurants about restaurant forum
July 9, 1998:	**Meeting with Cambridge Licensee Advisory Board**
July 16, 1998:	**9:00 a.m. and 7:00 p.m. Two Restaurant Forums** (attended by 36 people, 10 restaurants, & 2 hotels)
July 16, 1998:	*Chronicle prints "Proposed smoke ban ignites debate"*
July 21, 1998:	Howard Koh, Commissioner of the MA Department of Public Health, sends "A Cloud Over Our Cities and Towns: What Policy Makers Need to Know about Secondhand Smoke"
Week of July 27:	Mailing sent to all restaurants and retailers about August 5 C.P.H.C. public hearing
July 27, 1998:	Tobacco Control Update , Number 1 is sent to concerned individuals
July 28, 1998:	*Tab prints ad for 8/5 public hearing*
July 30, 1998:	*Chronicle prints ad for 8/5 hearing*

July 30, 1998: *Chronicle prints "Smoking Ban Compromise?"*

August 1998:

August 98 - April 99: Postcard Survey of Public Opinion regarding Smoking in Restaurants

August 5th: **5:30 p.m. Cambridge Public Health Commission Public Hearing at Kennedy Elementary School** (over 70 in attendance)

August 7, 1998: Tobacco Control Update, Number 2 sent to concerned individuals

August 9, 1999: *Globe prints "No-Smoke policy from 25% to 100%"*

September 1998:

September 8, 1998: **Presentation to Harvard Square Business Association**

September 16, 1998: **Initial Meeting of Restaurant Working Group**

October 1998:

October 13, 1998: **Presentation to City Council Health and Hospital Committee**

October 15, 1998: *Chronicle prints story "Health Leaders Eye Strict Smoke Ban"*

October 15, 1998: *Chronicle prints story "The Separation of Smoke and State"*

October 18, 1998: *Globe prints "Smoking Ban Outlined to Council"*

November 1998:

November 10, 1998: Tobacco Control Update, Number 3 sent to concerned individuals

November 17, 1998: *Chronicle full page ad Letter from ACS and health care providers "The time is right for clean indoor air in Cambridge"*

Week of November 23: Mailing to retailers about retailer forum

December 1998:

December - March:	Multi-lingual Opinion Survey in Health Centers
December 1, 1998:	*Tab prints notification of 12/3 Retailer Forum*
December 3, 1998:	**3:00 p.m. Tobacco Retailer Forum** (2 attended)
December 8, 1998:	Individual Visit to Sail Loft Individual Visit to Courtside Individual Visit to Green Street Grill Individual Visit to Middle East
December 10, 1999:	Individual Visit to Harvard Brew House Individual Visit to House of Blues
December 13, 1999:	Individual Visit to Frank's Steakhouse
December 17,1998:	**Restaurant Working Group Meeting**

(In December also visited 12 additional restaurants but did not speak with owner or manager)

January 1999:

January 13, 1999:	Individual Visit with Algier's Coffeehouse
January 19, 1999:	Meeting with Bruce Potter, MRA and John Clifford
January 20, 1999:	Individual Visit to Charles Hotel
January 21, 1999:	**Restaurant Working Group Meeting**
January 25, 1999:	Individual Visit with Lanes & Games Bowling Alley
January 25, 1999:	Individual Visit to Sheraton Commander Hotel

February 1999:

February 1999:	Clarke University Survey of 2,000 Registered Voters in Cambridge
February 1, 1999:	Individual Visit with Royal Sonesta Hotel
February 2, 1999:	Individual Visit with University Park Hotel

April 7, 1999:	Meeting with Councilor Davis
April 7, 1999:	Meeting with Mayor Duehay
April 9, 1999:	Tobacco Control Update, Number 4 sent to concerned individuals
April 15, 1999:	Individual Visit to 8 Portuguese speaking restaurant owners or managers with Portuguese speaker: Individual Visit to Firehouse Grill Individual Visit to Portugalia Individual Visit to Sunset Grill Individual Visit to Middle West Grill Individual Visit to Casal Bakery Individual Visit to Corner Delight Individual Visit to Figueirense Restaurant Individual Visit to Atasca
April 20, 1999:	Meeting with Councilor Reeves
April 20, 1999:	Meeting with Councilor Triantafillou
April 20, 1999:	Meeting with Councilor Russell
April 20, 1999:	Meeting with Deputy City Manager
April 20, 1999:	Submitted Response to City Council Order
April 21, 1999:	**Presentation to CHA Joint Board of Health**
April 21, 1999:	**Presentation to CHA Board of Trustees**
Week of April 26:	Mailing to 17 restaurants where food is incidental to alcohol
April 26, 1999:	City Council to refer to both Health & Hospital and Ordinance Committees
April 28, 1999:	Meeting with Councilor Galluccio
April 29, 1999:	*Chronicle prints article "Smoking ban compromise proposed"*
April 30, 1999:	Meeting with Councilor Toomey

May 1999:

May 3, 1999:	Meeting with Councilor Sullivan
May 4, 1999:	*Information on proposed changes and Health and Hospital meeting included in news reports on WBUR/NPR*
May 4, 1999:	**Cambridge City Council Health And Hospital Committee Meeting**
May 6, 1999	Mailing to 17 restaurants in which food is incidental to alcohol
May 12, 1999	**Forum: Smoking in Restaurants in which Food is Incidental to Alcohol** (6 restaurants attended)
May 19, 1999	**Ordinance Committee Hearing**

Key:

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18 group meetings or public presentations
55 individual visits to restaurants
7 mass mailings to restaurants and/or retailers regarding proposed changes
16 media mentions of proposed changes
3 public opinion surveys

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Facts support the regulations

In spite of ruling, secondhand smoke is dangerous

By EDWARD L. SWEDA JR. and PHOEBE WALKER

My Turn

Many people have heard about the controversial opinion by U.S. District Court Judge William Osteen, N.C., who recently ruled that the Environmental Protection Agency (EPA) did not follow acceptable scientific practices in deciding that secondhand smoke was a dangerous carcinogen. Since the EPA's finding was used as a basis for regulating smoking by a number of local boards of health in western Massachusetts, does this finding mean they were wrong to do so? Absolutely not. A closer look at the details of this ruling and the science about secondhand smoke shows a quite different picture, and supports the regulations in Greenfield, Montague, Deerfield, Sunderland, Athol, Amherst, Belchertown and Northampton.

In the 5½ years since the EPA issued its report on the health effects of secondhand smoke, scores of peer-reviewed studies have detailed a wide variety of ways that non-smokers are harmed by secondhand smoke. These include: increased hospitalizations of children due to bronchitis, pneumonia and ear infections; chronic respiratory symptoms in children; the induction of and the worsening of asthma in children; increased damage to the arteries; coronary heart disease; increased risk of lung cancer; increased risk of nasal sinus cancer; and increased risk of sudden infant death syndrome (SIDS). Indeed, breathing secondhand smoke can be deadly.

The tobacco industry's 1993 lawsuit against the EPA, which gives rise to Judge Osteen's ruling, was not the first instance of the tobacco industry attacking scientists and their work on the health effects of secondhand smoke. Internal industry memos were cited in an April 1998 Wall Street Journal article that began: "Determined to keep reports about secondhand smoke from mushrooming, the tobacco industry mobilized a counterattack in the mid-1980s to systematically discredit any researcher claiming perils from passive smoke."

In a Feb. 25, 1985, letter, Anthony Colucci, who was a top scientist at R.J. Reynolds Tobacco Co., write to H.E. Osmon, a director of public affairs at Reynolds: "We anticipate that if (then-EPA scientist James) Repace runs true to form there will be a good deal of media copy written about their (Repace's and naval researcher Alfred Lowrey's) analyses and thus we should begin eroding confidence in this work as soon as possible."

Even before Colucci's letter, the tobacco industry had long sought to discredit those who report about the hazards of secondhand smoke. In a 1981 Philip Morris document, an executive suggests funding studies "with the intent to publish data which refutes specific assertions by the anti-smoking forces." An official for BAT Industries (the parent company of Brown & Williamson Tobacco Co. in the United States) in 1993 listed as a strategy: "Conduct research to anticipate and refute claims about the health effects of passive smoking."

Furthermore, a study published in May 1998 in the Journal of the American Medical Association showed that of the articles that examined the health effects of breathing secondhand smoke, 37 percent (39 out of 106) concluded that exposure to secondhand smoke is not harmful to health. Of those 39 articles, 29 — or 74 percent — were written by authors with tobacco industry affiliations.

Last month, the St. Paul Pioneer Press reported that the tobacco industry has paid 13 scientists a total of $156,000 to write letters to influential publications criticizing the 1993 EPA report. In fact, a member of the editorial board of the Journal of Regulatory Toxicology and Pharmacology, along with a colleague, was paid $25,000 to write an article for his own publication.

This pollution of the scientific literature had the desired effect of misleading the public by exaggerating the extent of genuine scientific controversy over the health effects of secondhand smoke. As Julia Carol, co-director of Americans for Non-smokers' Rights, put it, referring to the 13 who accepted tobacco money for this purpose: "They're not scientists, they're prostitutes."

Local boards of health which choose to protect the health of their citizens are doing so on the strength of proven science, despite the best efforts of the tobacco industry. These boards deserve all of our support for their work on behalf of some of the most vulnerable people in restaurants and public places — children, asthmatics, and restaurant workers.

Edward L. Sweda Jr. is senior attorney for the Tobacco Control Resource Center, which is based at Northeastern University School of Law in Boston.

Phoebe Walker is the program manager for the Tobacco Free Greater Franklin County Coalition, a group of over 300 local citizens, youth, educators, and medical professionals, which is funded by the Massachusetts tobacco tax.

Russell B. Higley
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Legal Counsel
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Linda A. Stamper
Vali Buland
Cheryl Anne Watson

CITY OF CAMBRIDGE

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

April 26, 1999

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: ***Falb Amendment–Planning Board Request for Legal Opinion***

Dear Mr. Healy:

In response to the Planning Board's request for legal advice regarding the proposed zoning amendment to ban through trucks during night-time hours, I am providing a copy of a legal opinion prepared for the City Council last year. The opinion was done by Professor Richard Fallon of the Harvard Law School.

In essence, Professor Fallon concludes that a nighttime truck restriction on all Cambridge streets would face serious legal challenges under federal statutory and constitutional law. In addition, the restriction could be challenged as incompatible with applicable state law.

Proponents of the Falb Amendment rely heavily on the case of *New Hampshire Motor Transport Association v. Plaistow* , 67 F. 3d 326, rehearing denied, 67 F. 3d 333 (1st Cir., 1995), cert. denied, 116 S. Ct. 1352 (1996). Professor Fallon acknowledges that the *Plaistow* decision clearly establishes that federal law does not absolutely forbid the enforcement of municipal zoning regulations that reasonably restrict truck traffic in order to protect interests in residential peace and tranquility. As Professor Fallon points out, however, there are significant differences between the circumstances in *Plaistow* and the proposed city-wide truck ban.

The *Plaistow* case deals with a truck terminal, situated between five and six miles from Interstate 495 in New Hampshire. The terminal is the destination for large trucks from around the country dropping off freight to be delivered in New England. Trucks exit the interstate, travel on two New Hampshire state highways, and finally drive along

roughly 2000 feet of private way. The first portion of the private way lies in a Plaistow, New Hampshire residential zone.

After receiving complaints about noise from nighttime truck traffic, Plaistow officials sued the terminal's owner in state court alleging that the nighttime operations violated a town zoning ordinance prohibiting land uses that "may be obnoxious or injurious by reason of the production or emission of odors, dust, smoke, refuse matter, fumes, noise, vibration, or other similar conditions, or that are dangerous to the comfort, peace, enjoyment, health, or safety of the community." 67 F. 3d at 328. Pursuant to this general provision of the existing zoning ordinance, the town sued the owner of the truck terminal in state court and eventually obtained an injunction under which no trucks may arrive at or depart from the terminal between 11:00 p.m. and 5:00 a.m. The injunction permits two trucks to arrive or depart between 9:00 and 11:00 p.m., and three trucks to arrive or depart between 5:00 and 6:00 a.m.. There are no restrictions between 6:00 a.m. and 9:00 p.m.

The New Hampshire Motor Transportation Association brought a separate suit in federal court challenging the state court's injunction. The federal lawsuit challenged the injunction pursuant to several federal statutes and the commerce clause of the constitution. The federal district court upheld the state court action and the First Circuit Court of Appeals affirmed. Professor Fallon details the analysis of the court of appeals.

Some differences between the *Plaistow* case and the proposal contained in the Falb Amendment are:

First, in *Plaistow* there was no zoning amendment specifically targeting trucks.

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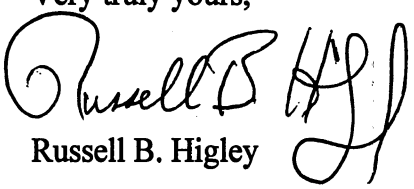
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CITY OF CAMBRIDGE

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

April 26, 1999

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: ***Falb Amendment–Planning Board Request for Legal Opinion***

Dear Mr. Healy:

In response to the Planning Board's request for legal advice regarding the proposed zoning amendment to ban through trucks during night-time hours, I am providing a copy of a legal opinion prepared for the City Council last year. The opinion was done by Professor Richard Fallon of the Harvard Law School.

In essence, Professor Fallon concludes that a nighttime truck restriction on all Cambridge streets would face serious legal challenges under federal statutory and constitutional law. In addition, the restriction could be challenged as incompatible with applicable state law.

Proponents of the Falb Amendment rely heavily on the case of *New Hampshire Motor Transport Association v. Plaistow* , 67 F. 3d 326, rehearing denied, 67 F. 3d 333 (1st Cir., 1995), cert. denied, 116 S. Ct. 1352 (1996). Professor Fallon acknowledges that the *Plaistow* decision clearly establishes that federal law does not absolutely forbid the enforcement of municipal zoning regulations that reasonably restrict truck traffic in order to protect interests in residential peace and tranquility. As Professor Fallon points out, however, there are significant differences between the circumstances in *Plaistow* and the proposed city-wide truck ban.

The *Plaistow* case deals with a truck terminal, situated between five and six miles from Interstate 495 in New Hampshire. The terminal is the destination for large trucks from around the country dropping off freight to be delivered in New England. Trucks exit the interstate, travel on two New Hampshire state highways, and finally drive along

roughly 2000 feet of private way. The first portion of the private way lies in a Plaistow, New Hampshire residential zone.

After receiving complaints about noise from nighttime truck traffic, Plaistow officials sued the terminal's owner in state court alleging that the nighttime operations violated a town zoning ordinance prohibiting land uses that "may be obnoxious or injurious by reason of the production or emission of odors, dust, smoke, refuse matter, fumes, noise, vibration, or other similar conditions, or that are dangerous to the comfort, peace, enjoyment, health, or safety of the community." 67 F. 3d at 328. Pursuant to this general provision of the existing zoning ordinance, the town sued the owner of the truck terminal in state court and eventually obtained an injunction under which no trucks may arrive at or depart from the terminal between 11:00 p.m. and 5:00 a.m. The injunction permits two trucks to arrive or depart between 9:00 and 11:00 p.m., and three trucks to arrive or depart between 5:00 and 6:00 a.m.. There are no restrictions between 6:00 a.m. and 9:00 p.m.

The New Hampshire Motor Transportation Association brought a separate suit in federal court challenging the state court's injunction. The federal lawsuit challenged the injunction pursuant to several federal statutes and the commerce clause of the constitution. The federal district court upheld the state court action and the First Circuit Court of Appeals affirmed. Professor Fallon details the analysis of the court of appeals.

Some differences between the *Plaistow* case and the proposal contained in the Falb Amendment are:

First, in *Plaistow* there was no zoning amendment specifically targeting trucks.

Second, *Plaistow* involved a narrowly targeted application of a city zoning ordinance to a single, private road in a single residential neighborhood, following a trial in a state court with specific factual findings showing a disruption of tranquility within that neighborhood. The Falb amendment proposes a city-wide ban on all streets, necessarily lacking the detailed level of fact-specific findings present in *Plaistow*. The federal statutory and constitutional analysis done by the court in *Plaistow* turns essentially on the question whether the local regulation is unreasonable or unnecessary or excessive. Each of these standards requires an assessment of the factual basis for the regulation. As Professor Fallon notes, this difference in posture between the cases makes reliance on the *Plaistow* decision as a support for a city-wide ban at best risky.

Third, the court noted that the challengers in *Plaistow* had made a cursory argument that actually waived the factual issues on which a challenge to the ordinance ultimately had to depend. As Professor Fallon notes, a city-wide ban is likely to provoke a more industrious and savvy challenge than occurred in *Plaistow*.

Fourth, the limited scope of the restriction in *Plaistow*, and the limited record from the state court action, supported the conclusion of reasonableness of the regulation under the federal regulatory scheme. In general, however, that scheme discourages 'balkanization" of commerce regulations, and Professor Fallon notes that a city-wide ban,

with the potential for several adjoining communities to join in, would likely trigger a higher level of scrutiny than the single stretch of road in the *Plaistow* case.

Fifth, in *Plaistow* there is no mention of any New Hampshire state statutes or regulations relating to the case. The Falb Amendment may well implicate the provisions of M.G.L. c. 85, §2. Under that statute any local regulation or ordinance which excludes motor vehicles from state highways is invalid. There are several such highways that run partially through the city, and such an ordinance provision would appear to be invalid as applied to those highways.

In addition, M.G.L. c. 85, §2 provides that any rule, regulation, order, or ordinance of a city "...made or promulgated relative to or in connection with the erection or maintenance of signs, traffic control devices, school zones, parking meters, or markings on any way within its control shall take effect...' without MHD approval, except that such a regulation or ordinance shall not take effect until approved in writing by the MHD if made in relation to:

(1) any way at its intersection or junction with a state highway;
(2) any project which is or was federally funded;
...
(4) any sign excluding heavy commercial vehicles;
...
(7) any rule, regulation, order, ordinance or by-law of a city or town which when made or promulgated would exclude motor vehicle travel on any existing way which connects one city or town with another, unless such rule, regulation, order, ordinance, or by-law was promulgated in compliance with the following: (a) the rule-making body of the city or town initiating such rule, regulation, order, ordinance or by-law gives written notice of such action to the chief executive officer of the abutting city, town or county into which the said way extends, and (b) a public hearing is held by the city, town or county initiating such alteration, relocation, or discontinuance, public notice of which must be published for each of the two weeks preceding such hearing in a newspaper of general circulation in the abutting city, town or county into which the said way extends, and (c) after concurrence in writing by the chief executive officer of the abutting city or town into which the said way extends or his designee.

The statute provides that maintenance of any of the "traffic control devices" without requesting and obtaining the required approval will authorize the MHD to "...withhold or withdraw the unexpended balance of funds assigned to the said city..." under statutes which distribute federal and state highway improvement funds to the City.

Chapter 85, §2 is not a model of clarity, and there have been no cases interpreting its provisions in any manner helpful to this analysis. It may be possible to read the statute as only prohibiting the erection of signs. The proponents of the Falb Amendment favor this view, and argue that a zoning amendment need not be posted by signage, hence there would technically be no violation of the statute in adopting the amendment. Attempting a city-wide nighttime truck ban without signage would at least complicate the ability to

enforce the ban, since vehicles are generally permitted on public streets unless those streets are properly posted to exclude them, raising a potential due process problem. Setting aside for the moment the due process issues, however, I think there is a significant risk that a court could interpret the statute as prohibiting the ordinance itself, without regard to the posting of signs. Chapter 85 seems to reflect a legislative intent to require centralized, MHD approval of regulations designed to exclude, among other things, heavy commercial vehicles. Our experience with the MHD on these issues demonstrates that they tend to guard against the proliferation of local exclusions, perhaps on the assumption that all communities would like to exclude trucks if possible. Use of the zoning power to accomplish something that c. 85 would not permit will likely draw a heightened scrutiny by the courts, with an uncertain outcome.

As Professor Fallon points out, City regulations that restrict nighttime traffic only on exclusively residential streets would at least have better prospects of surviving legal challenge. Such a restriction would come within the specific holding of the *Plaistow* decision as to federal law requirements. There would remain the question whether state statutory requirements such as those contained in M.G.L. c. 85, §2 might still lead to a different result, and it would be best if any such regulation were approved by the MHD.

Please let me know if I can be of further assistance in this matter.

Very truly yours,

Russell B. Higley

cc. Rich Rossi
Beth Rubenstein
Les Barber
Nancy Glowa

C. C. 106

City of Cambridge

In City Council May 17, 1999

The Health and Hospital Committee held a public hearing on May 4, 1999, beginning at 5:35 p.m. in the Sullivan Chamber for the purpose of receiving information about the Public Health Department's proposal to strengthen the restrictions on smoking in bars and restaurants and youth access to tobacco through amendments to the Smoking Ordinance.

Present at the hearing were Councillor Katherine Triantafillou, Chair of the Committee; Mayor Francis H. Duehay; Councillor Kathleen Leahy Born; Councillor Henrietta Davis; Councillor Sheila T. Russell; Councillor Michael A. Sullivan; and City Clerk D. Margaret Drury. Also present were Richard Rossi, Deputy City Manager; John O'Brien, CEO, Cambridge Health Alliance; Harold Cox, Chief Public Health Officer; Michael Muehy, Director, Commission for Persons with Disabilities.

Councillor Triantafillou convened the hearing and explained the purpose. Mayor Duehay announced that he had to leave early for the School Committee meeting. He stated that he believes in the strongest possible safeguards to protect public health. There is abundant evidence that second hand smoke is a health risk. He expressed his support for the proposal before the committee.

Councillor Triantafillou invited John O'Brien to begin the presentation. Mr. O'Brien stated that a tremendous amount of work has been done by the Health Department since the last meeting. He submitted an outline of this work. Attachment A. He highlighted the outreach efforts directed by Harold Cox, Chief Public Health Officer.

Michael Muehy, Executive Director of the Commission for Persons with Disabilities, spoke next. He stated that he is a Cambridge resident and he is the ADA (Americans with Disabilities Act) Coordinator for the City of Cambridge. He stated that he wanted to begin his presentation on a personal note. In 1976, he fell off a roof while he was in college and since then he has been disabled. He uses a wheelchair. His lung capacity was also reduced, and he does not want it to be further reduced by environmental tobacco smoke. He noted that people with respiratory and circulatory disabilities are protected by the ADA. A smoky restaurant is as much of a barrier to them as a staircase is to him. The Commission for Persons with Disabilities supports an outright ban on smoking in restaurants. The proposal contains reasonable exceptions.

Committee Report #1 Col 21

A report from Councillor Triantafillou, Chair of the Health and Hospital Committee, for a hearing held on May 4, 1999 for the purpose of receiving information about the Public Health Dept.'s proposal to strengthen the restrictions on smoking in bars and restaurants and youth access to tobacco thru amendments to the Smoking Ordinance.

In City Council May 17, 1999

Report Accepted
Placed on file
Passed to a 2nd Reading.

019

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

1 of 3

6/24/99

Passed to be Ordained as Amended 8-1-0.

1. Scientific information on secondhand smoke. This section includes the final report of the California Environmental Protection Agency which many public health experts consider to be one of the best summaries available. Also enclosed are two articles on in workplaces including restaurants. These articles present information on the many health risks of secondhand smoke.

Occupational Exposure to Environmental Tobacco Smoke

S. Katharine Hammond, PhD; Glorian Sorensen, PhD, MPH; Richard Youngstrom, MS, CIH, CSP; Judith K. Ockene, PhD

Objectives.—To measure occupational exposures to environmental tobacco smoke in diverse settings, including offices and production areas, and to evaluate the effectiveness of policies that restrict or ban smoking in the workplace.

Design.—Survey. The average weekly concentration of environmental tobacco smoke was measured with passive monitors that sample nicotine. Approximately 25 samplers were placed in each worksite for 1 week.

Setting.—Twenty-five Massachusetts worksites, including fire stations, newspaper publishers, textile dyeing plants, and manufacturers of valves, fiberoptics, flight instruments, batteries, adhesives, semiconductor equipment, filters, and tools and dies. Samples were collected in offices and production areas.

Main Outcome Measures.—The distribution of nicotine concentrations in various work settings as a function of company smoking policy. These data were interpreted with three approaches: comparing measured concentrations with a published risk assessment; comparing occupational exposures with home exposures; and evaluating the "cigarette equivalents" to which workers were exposed.

Results.—Worksite smoking policy had a major effect on the nicotine concentrations, which fell from a median of 8.6 $\mu g/m^3$ in the open offices at worksites that allowed smoking to 1.3 $\mu g/m^3$ in sites that restricted smoking, and to 0.3 $\mu g/m^3$ in worksites that banned smoking. The nonoffice workspaces were affected similarly, with median concentrations of 2.3, 0.7, and 0.2 $\mu g/m^3$ at worksites that allowed, restricted, and banned smoking, respectively.

Conclusion.—All three evaluation methods indicated that occupational exposure to environmental tobacco smoke presents a substantial risk to workers in the absence of a policy restricting or banning smoking.

(*JAMA.* 1995;274:956-960)

SEVERAL REVIEWS of the literature during the past decade have documented the adverse health effects of exposure to environmental tobacco smoke (ETS).[1-5] Various studies have estimated that, each year in the United States, ETS causes the deaths of approximately 3000 nonsmokers from lung cancer[5] and may cause another 30 000 to 50 000 heart disease fatalities.[6,7] Furthermore, ETS causes respiratory diseases in young children[5] and may contribute to increased risk in adults as well. Because ETS is so ubiquitous and has so many serious adverse health effects, it is considered the single most important indoor air contaminant.

From the Departments of Family and Community Medicine (Dr Hammond) and of Behavioral Medicine (Drs Sorensen and Ockene and Mr Youngstrom), University of Massachusetts Medical School, Worcester. Dr Hammond is now with the Environmental Health Sciences Division, School of Public Health, University of California, Berkeley. Dr Sorensen is now with the Division of Cancer Epidemiology and Control, Dana-Farber Cancer Institute, Boston, Mass, and the Department of Health and Social Behavior, Harvard School of Public Health, Boston. Mr Youngstrom is now with the Division of Cancer Epidemiology and Control, Dana-Farber Cancer Institute.

Reprint requests to Environmental Health Sciences Division, School of Public Health, University of California, Berkeley, CA 94720-7360 (Dr Hammond).

People are exposed to ETS in their homes, at work, and in public places. Most epidemiological studies of adverse health effects have focused on home exposures under the assumption that a smoking spouse or parent exposes other household members and more time is spent in the home than at any other location. Regulatory efforts to limit exposure have focused on exposures in public places, such as governmental buildings, restaurants, and commercial aircraft. Occupational exposures have been the least studied.

One major question is whether the exposures in the workplace are comparable in concentration with those in the home, where epidemiological evidence has demonstrated the adverse effects of ETS. The workplace is second only to the home as a location in which adults spend time.

Approximately 110 million Americans work outside the home and may be exposed to ETS at work. This exposure is involuntary. For an individual who lives with nonsmokers, the workplace is often the major source of ETS exposure,[8] which may continue for 40 to 45 hours per week during a 45-year working lifetime. The Occupational Safety and Health Act states the employer has a general duty "to furnish to each of his employees ... a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees" (section 5[a][1]).[9] Workplaces that allow smoking may not be meeting this duty.

In 1992, 59% of worksites that employed more than 50 workers had a formal policy that either banned smoking or restricted smoking to ventilated areas,[10] a substantial increase from 1985, when only 27% of worksites reported such policies. The increasing adoption of worksite nonsmoking policies is a reflection of legislative changes as well as increasing concern about liability and the health effects of ETS. According to the 1989 surgeon general's report,[11] 31 states required smoking restrictions in public worksites and 13 required them in private worksites as well.

Nonsmoking policies can influence the air quality in companies. After New England Telephone implemented a smoking policy, self-reported exposure to smoke in areas where smoking was prohibited decreased; however, workers reported that air quality either worsened or stayed the same in places where smoking was allowed.[12] After a policy that restricted smoking to a few designated areas was implemented in a Canadian worksite, employees' reports of being bothered by smoke decreased except in areas where smoking was permitted, such as in cafeterias.[13] A study of 710 worksites with nonsmoking policies from 11 communities across North America found that compliance was highest in worksites with more restrictive policies.[14]

This investigation was undertaken to study the levels of ETS to which nonsmokers are exposed while on the job. Although most studies of occupational exposure to ETS have examined the office environment, this study includes a variety of nonoffice workers, eg, production workers and firefighters, at 25 diverse worksites. These measurements were made as part of the WellWorks project,[15] a worksite cancer prevention study, and employees were potentially exposed to other carcinogens or suspected carcinogens. A second aim of this investigation was to examine the efficacy of workplace smoking polices in reducing occupational exposure to ETS.

METHODS

Worksites participating in this study were part of the WellWorks project, one of four intervention research centers participating in the Working Well Cooperative Agreement, a randomized worksite intervention trial funded by the National Cancer Institute (participating centers are listed in the acknowledgment at the end of this article). Worksites from central and eastern Massachusetts were recruited to the WellWorks study[15] if they met the following eligibility criteria: employed 200 to 2500 employees; had less than 20% turnover per year; had less than 20% of full-time employees who did not read or write English; and used a known or suspected occupational carcinogen. All 24 participating worksites agreed to be randomly assigned to either an intervention (health promotion and prevention) or a comparison condition; to permit surveys of employees and company representatives; and to allow measurements of ETS levels. At the worksite's request, a 25th worksite, a local union office where 15 people worked, was surveyed concurrently by the same sampling protocols, and the results are included in this report. These surveys were conducted from 1991 to 1992. The 25 worksites that participated in the ETS survey had a broad range of business functions: newspaper publishing, firefighting, clothing imprinting, textile dyeing, union organizing, and manufacturing of flight instruments, aerospace technology, knives and tools, tools and dies, batteries, synthetic rubber products, semiconductor equipment, valves, metal parts, fiberoptics, adhesives, process controllers, blood processing equipment, and filters.

The average weekly concentration of ETS was determined by a passive monitor that samples nicotine; a filter treated with sodium bisulfate is held in a modified 4-cm-diameter polystyrene cassette, a membrane filter serves as a windscreen, and nicotine passively diffuses to the treated filter, where it is trapped. The effective sampling rate is 24 mL/min. The collected nicotine is analyzed by gas chromatography with nitrogen selective detection; details are presented elsewhere.[16,17] The limit of detection was 0.01 μg per sample, or 0.1 μg/m³ for 45 hours.

Approximately 15 to 25 samplers were placed in each worksite and left in place for 1 week. The monitors were placed at work areas in the offices and the nonoffice (shop) areas to determine an overall measure of ETS exposure for each worksite. In large worksites with multiple buildings, samplers were placed in one building that had representative work areas (office and shop). In offices and shop locations where employees worked in fixed locations, the smoking status of the occupant was assigned to the sample. Since most shop employees did not work in fixed locations, samples were placed around the shop floor approximately 1.5 to 2 m high; unless a smoker routinely worked within 1 m of the sampler, the sampler was assumed to reflect the exposure of nonsmokers. A description and the name of a company contact person were posted with each sampler.

Each monitor sampled air continuously for 1 week, so that daily variations were not evaluated but rather the average nicotine concentrations during the week for each sampler. Smoking was assumed to be taking place for 9 hours a day on each workday (8 hours of work plus 30 minutes to 1 hour of lunch or break time), except at the fire stations, where occupancy was presumed to continue for two thirds of the day, or 16 hours per day, 7 days a week. The concentrations of nicotine reported herein for each monitor were calculated to reflect the average exposure during those periods.

Information on company smoking policies was collected at baseline by the Organizational Information Questionnaire administered to the personnel directors at all worksites. Companies were classified into one of three categories based on their smoking policy: (1) smoking allowed throughout the worksite, except restrictions for safety reasons (11 worksites); (2) smoking restricted to designated areas only (eight worksites); and (3) smoking banned throughout the worksite (six worksites).

Work areas were classified as "closed office" (relatively small rooms with one or two occupants); "open office" (larger rooms, with or without partitions, in which many people worked); or "nonoffice" or "shop" (other work areas, including production, shipping, laboratories, and fire stations). Additional areas sampled included corridors, cafeterias, and other break areas. Unless one of the latter two areas had designated smoking and nonsmoking sections, all samples were assumed to represent possible exposure to nonsmokers.

RESULTS

These analyses focus on the 467 samples collected in the work (359 samples) and break (108 samples) areas of nonsmokers. The samples collected from the work areas of nonsmokers at 25 Massachusetts worksites were categorized into closed offices (13 samples), open offices (125 samples), and nonoffice, or shop, areas (221 samples).

Office Exposure

Samples were collected from the closed offices of 11 nonsmokers at worksites where smoking was allowed. The median nicotine concentration was 9.1 μg/m³ (range, <0.1 to 22 μg/m³; mean, 8.3 μg/m³). Only one sample each was collected in closed offices of worksites that restricted or banned smoking, and the levels were 0.6 and less than 0.1 μg/m³, respectively.

The weekly nicotine concentration measured at nonsmokers' desks in open offices (125 samples) varied by three orders of magnitude, from less than 0.1 μg/m³ to more than 40 μg/m³ (five samples). The distributions of these values varied dramatically with smoking policy at the worksite (Figure 1). For example, the median value dropped from 8.6 μg/m³ in companies that allowed smoking to 1.3 μg/m³ in those that restricted smoking and 0.3 μg/m³ in those that banned smoking (averages were 14, 3.4, and 0.7 μg/m³, respectively). The 90th percentile value in open offices at companies that allowed smoking was 34 μg/m³, averaged over the workweek, but was reduced to 9 μg/m³ in companies that restricted smoking and 1.7 μg/m³ in companies that banned smoking. Conversely, 24 (83%) of 29 samples collected at nonsmoking office workers' desks in companies that banned smoking were less than 1 μg/m³, while only 16 (46%) of 35 samples from companies with restrictive policies and only eight (13%) of 61 samples from companies that allowed smoking had such low exposures. Of the 29 samples collected at office workers' desks in companies with smoking bans, 12 (41%) showed nicotine concentrations less than 0.1 μg/m³.

Nonoffice (Shop) Exposure

The weekly nicotine concentrations measured in nonsmokers' work areas in the production areas and fire stations (221 samples) ranged from less than 0.1 μg/m³ to more than 20 μg/m³ (four samples). The distributions of these concentrations was also highly dependent on the worksite smoking policies (Figure 2). The median values were 2.3, 0.7, and 0.2 μg/m³ for worksites that allowed smoking, restricted smoking, and banned smoking, respectively, and the corresponding means were 4.4, 2.2 and 0.2 μg/m³. The 90th percentile levels in these companies were 7.2, 4.0, and 0.6 μg/m³, respectively. Nearly all (51 [96%]) of the 53 samples collected at companies that banned smoking had nicotine levels less than 1 μg/m³, while only 25 (22%) of the 114 samples from worksites that allowed smoking were this low (two thirds of these low samples were from areas where smoking was prohibited for safety reasons); 34 (63%) of the 54 samples from companies that restricted smoking were less than 1 μg/m³, and more than a quarter of the samples had nicotine concentrations that were less than detectable (<0.1 μg/m³), as did 23

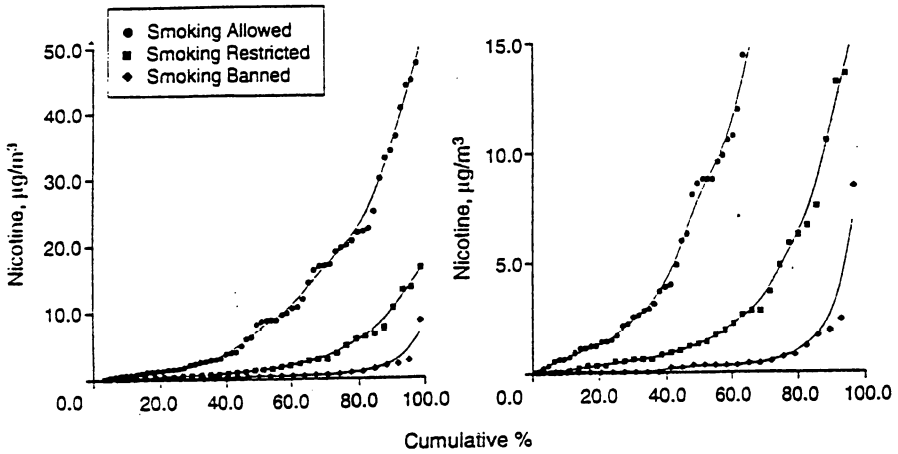


Figure 1.—Left, Cumulative frequency distributions of weekly average nicotine concentrations at the desks of nonsmoking workers in open offices measured at 25 worksites. Median (50th percentile) nicotine concentrations were 8.6, 1.3, and 0.3 µg/m³ at worksites that allowed, restricted, or banned smoking, respectively. Right, Nicotine concentrations at the desks of nonsmoking office workers, with detail provided at concentrations less than 15 µg/m³.

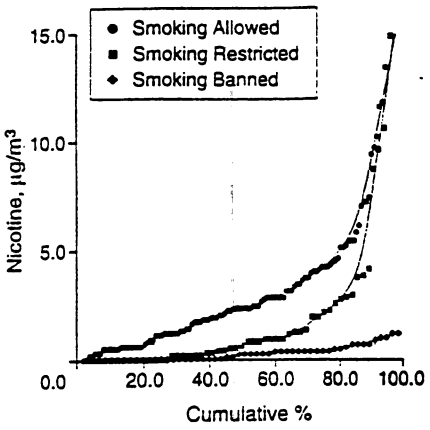


Figure 2.—Cumulative frequency distributions of weekly average nicotine concentrations in nonsmokers' work areas in shops and other nonoffice settings. Note that 10% of the samples had nicotine levels of more than 7.2, 4.0, and 0.6 µg/m³ at worksites that allowed, restricted, and banned smoking, respectively.

(43%) of the 53 samples from companies that banned smoking.

Break and Cafeteria Areas

Samples were collected in the cafeteria (57 samples) and break areas (51 samples), which are typically occupied for only a part of each work day. However, concentrations were calculated as an average over the full workweek; therefore, these concentrations are an underestimate of the actual concentrations during meal and break times, when these areas are normally occupied.

At companies that banned smoking, all nine of the samples collected in the cafeteria had nicotine levels less than 1 µg/m³. By contrast, this level was exceeded by all 15 of the samples at companies that allowed smoking and by 19 (86%) of 22 samples from those companies that restricted smoking; two thirds of these samples averaged more than 5 µg/m³.

Half of the 20 samples in the break areas from worksites that restricted smoking had nicotine concentrations greater than 5 µg/m³, while only four (20%) of the 20 samples from companies that allowed smoking were as high. The proximity of break areas to designated smoking areas may explain this result. More than 17 (85%) of the 20 break area samples from companies that allowed smoking had concentrations greater than 1 µg/m³.

COMMENT

This is the first large study known to us that reports the results of occupational exposure to ETS in multiple worksites and includes both office and manufacturing areas. These results indicate a strong correspondence between nonsmokers' ETS exposures and workplace smoking policies.

Although ETS samples were collected at smokers' and nonsmokers' workstations, this article focuses on those that represent nonsmokers' occupational exposures to ETS. The ETS exposures found in this study are similar to those reported in other studies that used active sampling for nicotine during a workshift to measure occupational exposure.[18-21] Muramatsu et al[18] measured nicotine concentrations in offices that averaged 20 µg/m³, in a laboratory that averaged about 6 µg/m³, and on airplanes that averaged 15 µg/m³. A median of 4 µg/m³ was reported for 16 personal measurements of flight attendants in 1988.[19] Coultas et al[20] measured the nicotine exposures of 15 nonsmokers during their workshifts in 1986 to 1987 and found median concentrations of 10 µg/m³ for five hospital workers, 7.2 µg/m³ for five office workers, 9 µg/m³ for two barbers, 7 µg/m³ for a maintenance worker, and 45 µg/m³ for a restaurant worker. Large variations were found in ETS exposures among nonsmoking railroad workers: 33 samples of office workers had a median nicotine concentration of 7 µg/m³, close to the median of 8 µg/m³ found in the present study at workplaces that allowed smoking, and the 25th and 75th percentiles of the railroad office workers' exposures were 2 and 12 µg/m³, respectively; 136 personal samples taken from those who worked outdoors or in a large repair shop indicated much lower ETS exposures, with the 75th percentile being a nicotine concentration of 0.5 µg/m³.[21]

Interpreting Exposures to ETS

Three approaches are used to place in perspective the occupational ETS exposures reported herein: (1) comparing the levels of occupational ETS exposures with a risk assessment reported in the literature; (2) comparing occupational ETS exposures with those in homes; and (3) evaluating the number of "cigarette equivalents" to which workers may be exposed.

Occupational Exposures Based on Risk Assessment.—Repace and Lowrey[22] evaluated the risk of ETS exposure in the workplace and estimated that workplace nicotine exposure of 2.3 µg/m³ for 40 years presents a lung cancer risk of three in 10 000, a "de manifestis" risk, ie, "a risk of obvious or evident concern," or risks so high that the US regulatory agencies have almost always acted to reduce them.[23] The Occupational Safety and Health Administration often considers action based on a "significant risk level" of one in 1000 and assumes 45 years of working life; the significant risk would thus occur at exposures to nicotine at or above 6.8 µg/m³. Figures 1 and 2 demonstrate that a substantial proportion of the nonsmoking workers at companies that allowed smoking were exposed above both levels. Of the 114 shop workstations sampled, 12% were above 6.8 µg/m³, and half were above 2.3 µg/m³, the de manifestis risk level. Offices at worksites that allowed smoking exposed an even higher percentage of workers to high levels of ETS: two thirds of the 61 samples were above the de manifestis level, and more than half of the samples from the offices surveyed were well above the significant risk level (Figures 1 and 2).

Clearly, banning smoking drastically reduced ETS exposures: none of the 82 work areas measured at the six worksites in which smoking was banned exceeded the significant risk level, and only two samples were above the de manifestis level. Those eight sites that restricted smoking had intermediate results, with

10 (11%) of the 89 work areas being above the significant risk level and 25 (28%) being above the de manifestis level. Note that this risk assessment is based only on lung cancer. Although ETS-associated heart disease affects far more people than lung cancer does, quantitative risk assessment has not yet been performed.

Comparison of Occupational Exposure With Home Exposures.—Exposures to ETS are highly variable. In the home, workplace, or any other environment, the concentrations of nicotine may range from less than detectable to several orders of magnitude higher. With such variable data, averages can be misleading, and a more complete presentation of the data is needed. The box plots of several studies in Figure 3 show the 25th, 50th (median), and 75th percentiles of ETS exposure (enclosed in the box) as well as the maximum and minimum exposure levels (the range is indicated by the lines).

Figure 3 compares the occupational exposures to ETS measured at worksites where smoking was allowed with personal and home exposures. The first two box plots compare the personal exposures of nonsmokers married to smokers with those of nonsmokers not married to smokers,[24,25] the two groups whose risks for lung cancer and heart disease have been compared in most epidemiological studies of ETS. Although those married to smokers had higher exposures, there is clearly an overlap in distributions of exposures with those married to nonsmokers. The next two box plots show the levels of ETS in smokers' homes as measured by personal sampling on 22 children and area sampling in their homes.[26] The last two box plots present the results of the present investigation of the occupational exposures to ETS at companies that allowed smoking. As Figure 3 illustrates, the ETS exposures in workplaces that allow smoking is comparable with, and often greater than, the ETS exposures in smokers' homes as well as the personal exposures of nonsmokers married to smokers, who have been shown to be at increased risk for lung cancer and heart disease compared with nonsmokers married to nonsmokers.[1,5,6,27]

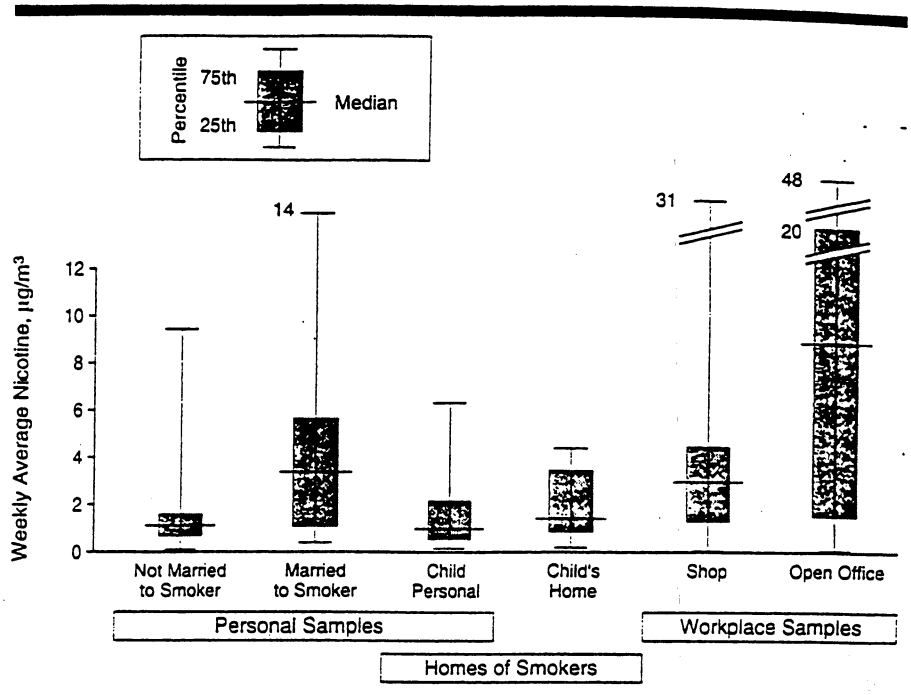


Figure 3.—Weekly average nicotine exposures in the home and at work by personal sampling (first two bars), in smokers' homes, area and personal sampling (middle two bars), and at work (this study) (last two bars).

Compound Specific Cigarette Equivalents for 8-Hour Exposures to Environmental Tobacco Smoke*

		90th Percentile of Exposure		
	Obvious Risk	Nonoffice Workstations	Restaurant	Open Offices
Concentration of nicotine, µg/m³	2.3†	7.2‡	18§	34‖
Contaminant, cigarette equivalents				
Nicotine	0.01	0.05	0.12	0.22
Benzene¶	0.05	0.16	0.39	0.74
4-Aminobiphenyl¶	0.22	0.68	1.7	3.22
N-Nitrosodimethylamine#	0.74	2.32	5.8	11.0

*The number of "cigarette equivalents" that a passive smoker has inhaled may be calculated according to the following equations: cigarette equivalents=(amount from passive exposure/amount from smoking one cigarette); cigarette equivalent compound Y=([nicotine]×V×Y(SS)/nicotine(SS)×Y(MS)), where Y indicates mass of compound Y inhaled by passive smoker; [nicotine], concentration of nicotine; V, volume of air breathed by passive smoker (minute volume×minutes exposed); Y(SS), mass of compound Y in sidestream emissions of one cigarette; Y(MS), mass of compound Y is mainstream emissions of one cigarette; and nicotine(SS), mass of nicotine in sidestream emissions of one cigarette. Each exposure is assumed to last for 8 hours, and a ventilation rate of 20 L/min is assumed. Longer exposures will lead to proportionately higher "cigarette equivalents," as will higher breathing rates resulting from physical exertion at work.

†De manifestis level.[22] See text for definition.

‡Ninetieth percentile of samples collected from nonsmokers' nonoffice workstations at 10 Massachusetts work sites that allowed smoking.

§Ninetieth percentile of samples collected in restaurants in six cities.[31]

‖Ninetieth percentile of open office samples collected from 11 work sites that allowed smoking.

¶Human carcinogen.

#Animal carcinogen.

Cigarette Equivalents.—Researchers and advertisers have often tried to interpret measurements of nicotine exposure by converting these to "cigarette equivalents"[18,28] (RJ Reynolds advertisement, *New York Times*. May 23, 1994: A11). Such a calculation yields the number of cigarettes one would have to smoke to receive the same amount of nicotine as breathing the air in the given environment for a particular period. However, the ratio of sidestream to mainstream emissions is highly variable among these compounds. Nicotine serves as a marker compound for ETS,[29] but nicotine is not usually the compound of ultimate interest for cancer. Were "cigarette equivalents" calculated on the basis of the carcinogens in ETS, rather than nicotine, the cigarette equivalents would be much higher. This seeming anomaly results from the differences between mainstream and sidestream smoke.

Although the same toxic compounds are present in mainstream smoke (which the smoker inhales) as in sidestream smoke (which comes off the tip of a smoldering cigarette), they are emitted in different amounts because of the differing combustion conditions. Mainstream smoke is formed at a higher temperature, while much less oxygen is present when sidestream smoke is formed. These factors lead to a different preponderance of chemicals in mainstream and sidestream smoke. For example, although twice as much nicotine is emitted in sidestream as in mainstream smoke, the ratio for benzene is approximately 10 to one; sidestream smoke is even more enriched in many other carcinogens: eg, more than 30 times as much 4-aminobiphenyl and 100 times as much *N*-nitrosodimethylamine is emitted in sidestream as in mainstream smoke. Thus, the complex chemistry of tobacco

smoke leads to different numbers of "cigarette equivalents" depending on which compound is examined.

Clearly, "cigarette equivalents" can be a misleading term. A recent RJ Reynolds advertisement (*New York Times*. May 23, 1994:A11) stated that nonsmokers are exposed to only slightly more than one "cigarette equivalent" a month at the workplace. More accurately, a nonsmoker gets as much nicotine in a month at work as a smoker does in smoking one cigarette. However, in that same room, at the same time, the nonsmoker is getting as much benzene as a smoker gets in smoking six cigarettes, as much 4-aminobiphenyl as if smoking 17 cigarettes, and as much *N*-nitrosodimethylamine as one who smoked 75 cigarettes.

The Table presents some calculations of cigarette equivalents for several compounds of interest. Four hypothetical exposure situations are assumed: the de manifestis risk level (2.3 $\mu g/m^3$)[22] and the 90th percentile of nonoffice workspaces (7.2 $\mu g/m^3$), open office spaces (34 $\mu g/m^3$), and restaurants (18 $\mu g/m^3$).[30] For each setting, the calculated cigarette equivalent exposure ranges more than 1000-fold, and a description of exposure in nicotine cigarette equivalents yields a fivefold to 50-fold underestimate of the exposure to some of the known carcinogens. If the compound of interest is known, the cigarette equivalents for that compound can be calculated from the concentrations of nicotine measured and the relative sidestream and mainstream emissions of that compound.[29] If the compound of interest is not known, which is most commonly the case, then any such calculations are likely to be misleading at best and should be used with extreme caution.

Conclusions

A wide range of ETS exposures exists within and among workplaces. Policies restricting or banning smoking were found to reduce occupational exposure to ETS dramatically. The concentration of nicotine depends not only on the smoking activity but also on the characteristics of the space in which the smoking occurs. The ETS does not build up as much in workspaces that are large, with high ceilings and good ventilation, as in more enclosed spaces. Despite this, ETS measurements in nonoffice or shop workspaces where smoking was allowed were generally comparable with, and often much greater than, most measurements made in the homes of smokers; 12% of the 114 samples collected at nonsmokers' shop workstations were above the significant risk level of 6.8 $\mu g/m^3$. The ETS concentrations were even higher in office spaces that allowed smoking, where more than half of the 61 samples collected at nonsmokers' desks were above the significant risk level. Society is often presented with difficult alternatives, such as choosing between exposing workers to carcinogens and losing jobs if industry decides the cost of controlling exposures is too great. Choosing to control exposure to ETS, in this context, is relatively simple: ETS is not necessary to the manufacturing process or to the maintenance of jobs.

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Involuntary Smoking in the Restaurant Workplace

A Review of Employee Exposure and Health Effects

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Objective.—To determine the relative exposure to environmental tobacco smoke for bar and restaurant employees compared with office employees and with nonsmokers exposed in the home (part 1) and to determine whether this exposure is contributing to an elevated lung cancer risk in these employees (part 2).

Data Sources.—MEDLINE and bibliographies from identified publications.

Study Selection.—In part 1, published studies of indoor air quality were included if they reported a mean concentration of carbon monoxide, nicotine, or particulate matter from measurements taken in one or more bars, restaurants, offices, or residences with at least one smoker. In part 2, published epidemiologic studies that reported a risk estimate for lung cancer incidence or mortality in food-service workers were included if they controlled, directly or indirectly, for active smoking.

Data Extraction.—In part 1, a weighted average of the mean concentration of carbon monoxide, nicotine, and respirable suspended particulates reported in studies was calculated for bars, restaurants, offices, and residences. In part 2, the relative lung cancer risk for food-service workers compared with that for the general population was examined in the six identified studies.

Data Synthesis.—Levels of environmental tobacco smoke in restaurants were approximately 1.6 to 2.0 times higher than in office workplaces of other businesses and 1.5 times higher than in residences with at least one smoker. Levels in bars were 3.9 to 6.1 times higher than in offices and 4.4 to 4.5 times higher than in residences. The epidemiologic evidence suggested that there may be a 50% increase in lung cancer risk among food-service workers that is in part attributable to tobacco smoke exposure in the workplace.

Conclusions.—Environmental tobacco smoke is a significant occupational health hazard for food-service workers. To protect these workers, smoking in bars and restaurants should be prohibited.

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THE ADVERSE health effects of environmental tobacco smoke (ETS) exposure are now well recognized.[1-4] The Environmental Protection Agency classified ETS as a group A carcinogen and estimated that it causes about 3000 lung cancer deaths per year in nonsmokers.[3] The workplace is a major source of ETS exposure, and the National Institute for Occupational Safety and Health has recommended that involuntary exposure to tobacco smoke be eliminated by prohibiting smoking in the workplace.[5] Many state and local governments have responded to this recommendation by prohibiting smoking in public and/or private workplaces.[6]

Many local governments have regulated smoking in restaurants.[7] These efforts have generally focused on protecting the public from ETS (Hatfield L. Face-off: smoking in restaurants? *San Francisco Examiner*. February 27, 1992: A1). However, restaurants are also workplaces, and because restaurant employees spend a much longer time in the restaurant than do patrons, ETS exposure is more likely to result in adverse health effects for them.

This review assesses the potential health hazard of ETS exposure for bar and restaurant employees. There are two questions considered. First, what is the relative exposure to ETS for bar and restaurant employees compared with employees of other businesses and with individuals who live in a home with a smoker? Second, does ETS exposure in bars and restaurants produce an elevated lung cancer risk among these workers? To answer the first question, published indoor air quality data for bars, restaurants, offices, and residences were reviewed. To answer the second question, the epidemiologic studies of lung cancer risk in food-service workers were reviewed.

METHODS

Literature Review

A literature search was carried out using the National Library of Medicine MEDLINE database to locate published studies that reported measurements of tobacco constituents in indoor air and studies of occupational lung cancer risk in food-service workers. Bibliographies from each publication were reviewed to identify additional relevant citations.

In part 1, studies were included if they met the following criteria: (1) reported the mean concentration of carbon monoxide, nicotine, or respirable suspended particulates from measurements taken in one or more restaurants, bars, offices, or residences with at least one smoker; (2) did not include measurements taken in designated smoking areas; and (3) did not include measurements taken under smoke-free conditions. Thus, these studies include measurements in restaurants and offices that allowed smoking anywhere, or in the nonsmoking areas of restaurants and offices that restricted smoking to a designated area. Measurements in residences were taken in the presence of at least one smoker. In addition to individual studies obtained through the computer search, three published reviews were

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Table 1.—Indoor Air Concentrations of Carbon Monoxide, Nicotine, and Respirable Suspended Particulates in Restaurants, Bars, Offices, and Residences*

Constituent	No. of Studies	No. of Sites Sampled	Weighted Mean†	Range	Ratio‡
Carbon monoxide, ppm					
Offices	12	1161	3.0	1.0-3.3	1.0
Restaurants	12	229	5.1	0.5-9.9	1.7
Bars	10	32	11.6	3.1-17	3.9
Nicotine, μg/m³					
Offices	22	940	4.1	0.8-22.1	1.0
Residences	7	91	4.3	1.6-21	1.0
Restaurants	17	402	6.5	3.4-34	1.6
Bars	10	25	19.7	7.4-65.5	4.8
Particulates, μg/m³					
Offices	19	912	57	6-256	1.0
Residences	13	524	78	32-700	1.4
Restaurants	12	211	117	27-690	2.0
Bars	10	16	348	75-1320	6.1

*Data from Sterling et al,[9] Repace,[10] Guerin et al,[10] and Turner et al.[11] No studies met the inclusion criteria for measurement of carbon monoxide in residences.
†Weighted average of individual study mean concentrations for all measurements taken. Weights used were the number of restaurants, bars, offices, or homes sampled.
‡Ratio of weighted mean restaurant, bar, or residence to weighted mean office concentration.

helpful in ensuring that most of the relevant literature was included in the analysis. First, Sterling et al[8] reviewed the published literature on air sampling of tobacco constituents as of 1982. Second, Repace[9] reviewed the results of about 30 studies of indoor ETS concentrations that were published before 1987. Third, the most recent and extensive review of the literature, published by Guerin et al[10] in 1992, reports the results of nearly 100 air-sampling studies. Finally, data from the largest single study of indoor ETS levels, in which Turner et al[11] tested 585 office environments, were included in this review and analysis. It should be noted that data from individuals or groups allied with and funded by the tobacco industry[11] were included in the analysis.

In part 2, studies were included if they met the following criteria: (1) reported a risk estimate of lung cancer incidence or mortality in food-service workers compared with other workers or with the general population; and (2) controlled, directly or indirectly, for the confounding effects of active smoking.

Data Analysis

In part 1, a weighted average of the mean carbon monoxide, nicotine, and respirable suspended particulates concentrations reported in each of the studies was calculated for bars, restaurants, offices, and residences. The weight given to each study was the number of separate restaurants, offices, or homes sampled. This weighting procedure resulted in heavier weighting of studies that reported the means of a large number of separate office or restaurant measurements. These studies are more likely to reflect typical workplace concentrations than those measuring concentrations in a single workplace.

In part 2, no attempt was made to statistically pool the individual lung cancer risk estimates, owing to the small number of studies and the variability in study designs.

RESULTS

Part 1: ETS Levels in Restaurant Air

The mean restaurant ETS constituent concentrations are between 1.6 and 2.0 times higher than those in the office workplaces studied, and 1.5 times higher than levels in homes with at least one smoker present (Table 1). Mean concentrations of ETS constituents in bars are 3.9 to 6.1 times higher than in the office workplaces, and 4.4 to 4.5 times higher than in the residences.

One must be cautious in comparing ETS exposure in the home and workplace based only on ETS concentrations in ambient air because the duration of exposure is different in each environment. Repace[9] has shown that total exposure is proportional to both concentration and duration of exposure. Based on time-budget studies that have estimated the average amount of time spent by working persons in various environments, the average US adult spends about 14 hours in the home and 6 hours in the workplace per day.[12] Allowing for 8 hours of sleep per day, and assuming that persons exposed to ETS at home are exposed during all waking hours, the duration of exposure is similar in the two environments (6 hours). Thus, total exposure to ETS is likely to be at least 1.5 times higher for restaurant workers than for persons who live with a smoker, and at least 4.4 times higher for bar workers than for individuals with only domestic ETS exposure.

Part 2: Health Effects of Restaurant ETS Exposure

Eleven studies have examined lung cancer risk in food-service workers without controlling for active smoking.[13-22] These studies were excluded from the analysis. Six studies have examined lung cancer risk in food-service workers, controlling for active smoking and other potential confounding variables.[24-32] One of these was a historical cohort study that examined occupational lung cancer mortality. Five were case-control studies that included incident lung cancer cases (Table 2).

Investigators in the California Occupational Mortality studies[24-27] reviewed California's mortality data from 1979 through 1981 by occupation.[24-27] Crude standardized mortality ratios (SMRs) were calculated for food-service workers. Singleton and Beaumont[26] and Beaumont et al[27] then attempted to control for smoking, alcohol, and socioeconomic status indirectly by adjusting for national occupational smoking and alcohol use rates (imputed from National Health Interview Survey data and average occupational socioeconomic status). For white male food-service workers, the unadjusted lung cancer SMR was 105% and the adjusted SMR was 125% (95% confidence interval [CI], 90% to 169%). For male bartenders, the adjusted SMR was 152% (95% CI, 118% to 192%). For white waitresses, the crude SMR was 368% and the adjusted SMR was 148% (95% CI, 125% to 174%).

Williams et al[28] conducted a case-control study using cancer mortality data from the Third National Cancer Survey. Occupational history and a range of potential confounders were determined by interview. Odds ratios (ORs) for working in various occupations were determined for a variety of cancer types, adjusted for smoking, alcohol, income, and education. For female food-service workers, the adjusted lung cancer OR was 1.88. For male food-service workers, no risk estimate was reported owing to the small number of cases (two).

Lerchen et al[29] studied the relationship between occupation and lung cancer among males in a case-control study using the New Mexico Tumor Registry. Cases and population-based controls were interviewed to obtain occupational and smoking histories. For males employed in the "eating and drinking establishment industry" category, an adjusted OR of 1.6 (95% CI, 0.8 to 2.9) was reported.

Schoenberg et al[30] examined the relationship between occupation and lung cancer in New Jersey males in a case-control study. Cases obtained from a state health department reporting system and

Table 2.—Studies of Lung Cancer Risk in Food-Service Workers, Controlled for Active Smoking*

Source	Subjects	Study Design	Risk Estimate (95% Confidence Interval)	No. of Cases or Deaths	Additional Confounders Controlled
		Males			
Singleton and Beaumont[26]	California (deaths) Bartenders Other food-service workers	Historical cohort	SMR=1.52 (1.18-1.92) SMR=1.25 (0.90-1.69)	69 42	Age, sex, race, SES, alcohol
Lerchen et al[29]	New Mexico (incident cases) Eating and drinking industry workers	Case-control	OR=1.6 (0.8-2.9)	26	Age, sex, race, diet
Schoenberg et al[30]	New Jersey (incident cases) Bartenders Other food-service workers	Case-control	OR=. . . (1.2-1.3)† OR=. . . (1.1-1.2)†	29 37	Age, sex race, SES, diet
Zahm et al[31]	Missouri food-service workers (incident cases)	Case-control	OR=1.8 (1.0-3.5)	24	Age, sex, race
		Females			
Singleton and Beaumont[26]	California waitresses (deaths)	Historical cohort	SMR=1.48 (1.25-1.74)	149	Age, sex, race, SES, alcohol
Williams et al[28]	US food-service workers (incident cases)	Case-control	OR=1.88	12	Age, sex, race, SES, alcohol
Keller and Howe[32]	Illinois females employed in eating and drinking places: nonsmokers (incident cases)	Case-control	OR=1.92 (1.21-3.07)	Not given	Age, sex, race

*SMR indicates standardized mortality ratio; SES, socioeconomic status; and OR, odds ratio.
†Specific OR not given in source cited.

population-based controls were interviewed to obtain occupational, smoking, and dietary histories. The adjusted OR for male bartenders was between 1.2 and 1.3, and for other food-service workers was between 1.1 and 1.2.

Zahm et al[31] conducted a case-control study to determine (after adjusting for smoking) the relationship between lung cancer and occupation. Data from the Missouri Cancer Registry, which includes occupational and smoking histories, were reviewed for white male lung cancer cases diagnosed between 1980 and 1985. The adjusted OR for food-service workers was 1.8 (95% CI, 1.0 to 3.5).

Keller and Howe[32] performed a case-control study using all incident lung cancers among nonsmokers entered in the Illinois Cancer Registry from 1985 to 1987. The controls were nonsmoking colon cancer cases. Unlike the other five studies, Keller and Howe's study controlled for active smoking by specification rather than adjustment. Only nonsmokers were included in the analysis. The OR for lung cancer in females employed in eating and drinking places was 1.92 (95% CI, 1.21 to 3.07). No risk estimate was given for males.

Taken together, these studies suggest that there is an excess lung cancer risk of approximately 50% (range 10% to 90%) among food-service workers compared with the general population, controlling for active smoking. In the two studies that examined bartenders and other food-service workers separately, this excess lung cancer risk was found for both groups of workers.[26,30] Thus, it appears that there is an elevated lung cancer risk in both bar and restaurant workers that persists after controlling for active smoking.

COMMENT

The availability of ambient air survey data on ETS levels in more than 1000 offices, more than 400 restaurants, and more than 600 homes provides an opportunity to estimate the relative ETS exposure of bar and restaurant workers compared with that of office workers and with that of individuals who live with a smoker. In this analysis, ETS exposure for restaurant workers was estimated to be 1.6 to 2.0 times higher than for office workers, and at least 1.5 times higher than for persons who live with a smoker. For bar workers, ETS exposure was estimated to be 3.9 to 6.1 times higher than for office workers, and at least 4.4 to 4.5 times higher than for persons exposed in the home. An attempt was made to determine whether this increased estimated workplace ETS exposure in bars and restaurants produces an increase in lung cancer risk for these workers. In six epidemiologic studies that controlled for active smoking, an excess lung cancer risk of approximately 50% (range, 10% to 90%) was found for food-service workers compared with the general population. This excess risk could well be due to the increased ETS exposure of food-service workers. However, there are several alternative explanations that must be considered.

First, residual confounding by smoking might explain the elevation in lung cancer risk for food-service workers. There are several reasons to believe that this is not the case. Three case-control studies that controlled for smoking[29-31] involved detailed smoking histories. Smoking status was measured as a categorical[31] or continuous variable,[29,30] incorporating duration and intensity of smoking. Moreover, the adjustment for smoking produced little change in the OR for males. Lerchen et al[29] reported a change in OR from 1.7 to 1.6 when smoking was added to the regression model. Schoenberg et al[30] reported a change in OR of no more than 0.1 for food-service workers when smoking was considered. The finding of an elevated lung cancer risk among female food-service workers in a study restricted to nonsmokers[32] adds further evidence that residual confounding by smoking is unlikely to explain the elevated lung cancer risk among food-service workers.

Second, confounding by a variable known to be associated with both lung cancer and food-service employment might explain the observed association. The most important considerations are age, sex, race, socioeconomic status, and diet (saturated fat and β-carotene [vitamin A] intake[33]). However, age, sex, and race were controlled in all six studies (Table 2). Socioeconomic status was controlled in three studies, and diet in two. Vitamin A intake, but not saturated fat intake, was specifically measured in these studies.[29,30]

Third, publication bias might explain why the six published studies reported an increased lung cancer risk in food-service workers. However, since these studies examine the relationship between lung cancer and a wide variety of occupations, they will almost certainly find a positive association with one or more occupations. Therefore, it is not plausible that studies finding no association between lung cancer and food-service employment have been differentially rejected or not submitted for publication.

Finally, the observed increase in lung cancer risk among food-service workers might be due to a carcinogenic exposure other than ETS. The most important consideration is exposure to cooking fumes. Air samples of cooking fumes have been shown to be mutagenic in the Ames assay,[34] and cooks have been shown to have elevated risks of respiratory tract cancers.[16,17,20,35-38] However, there are several reasons to believe that exposure to cooking fumes is not contributing substantially to the increased lung cancer risk among food-service workers. First, a study of the mutagenicity of restaurant air[34] suggests that ETS is the major contributor to the mutagenicity of air from dining areas. In this study, the mutage-

nicity of air from dining areas was closely correlated with smoker density, but had no relation to the mutagenicity of air from kitchen samples. Second, ventilation in restaurants is generally designed to prevent cooking fumes from escaping into dining areas.[34] Average ventilation rates over cooking surfaces in four restaurants studied met the minimum requirements of the American Conference of Governmental Industrial Hygienists.[39] The most important source of exposure to cooking fumes in these restaurants was contamination in "cook's breathing zones during active work processes."[34] Third, a time-budget study of cooks found that only 33% to 60% of a cook's shift is spent over cooking surfaces.[34] Food-service personnel would be expected to spend a much lower percentage of their time in contact with air contaminants over cooking surfaces. Finally, the studies that have controlled for active smoking and examined lung cancer risk in cooks have not reported an elevated risk for these workers. Singleton and Beaumont[26] found an adjusted lung cancer SMR of 91% for males and 102% for females. Schoenberg et al[30] reported an adjusted OR of 0.9 for cooks. It is quite possible that the increased lung cancer risk among cooks is due to confounding by active smoking. Smoking rates in male cooks are 30% higher than in the general male population.[40]

An elevation in lung cancer risk attributable to ETS exposure in the restaurant workplace is plausible. Since domestic ETS exposure is associated with a relative risk for lung cancer of 1.3[1-3,25] and this review estimated that typical restaurant ETS exposure is at least 1.5 times higher than domestic exposure, an excess lung cancer risk over 30% in restaurant workers, compared with unexposed nonsmokers in domestic settings, would be expected. High levels of restaurant air mutagenicity[34] and increased levels of urine mutagenicity[41] and 3-aminobiphenyl,[42] a suspected carcinogenic hemoglobin adduct, have been demonstrated in ETS-exposed restaurant workers.

The effects of domestic ETS exposure[1-3] and ETS exposure in the workplace in general[15] have been recognized. This review of exposure to and health effects of ETS in bar and restaurant workplaces specifically addresses ETS as an important occupational health hazard for food-service workers. Public health efforts to regulate smoking in bars and restaurants can no longer focus only on protecting the patron. Food-service workers must be afforded the same public health protection as other workers. To protect these workers from the hazards of ETS, smoking should be prohibited in bars and restaurants.

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Health Effects of Exposure to Environmental Tobacco Smoke

Final Report
September 1997



CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Health Effects of Exposure to Environmental Tobacco Smoke

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California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

Preface

Environmental tobacco smoke (ETS), also called second hand tobacco smoke, can affect nonsmokers in proximity to people smoking tobacco. The scientific and medical literature contains hundreds of investigations of the association between ETS exposure and a variety of adverse health impacts, including carcinogenicity as well as cardiovascular, developmental, reproductive, and childhood respiratory effects. Although some studies have not shown an association, authoritative investigations and reviews over the past two decades have presented substantial scientific evidence linking ETS exposures to a number of adverse health outcomes.

Interest in the health effects of second hand tobacco smoke on the part of members of the Scientific Review Panel (SRP) on Toxic Air Contaminants led to a request by the SRP for a health assessment of ETS, and a collaborative agreement between the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board (ARB) in February 1992 to initiate such an assessment. Although not formally entered into the State's Assembly Bill 1807 toxic air contaminant identification program, the ARB, SRP and OEHHA agreed that a thorough assessment of risk similar to that done under the AB 1807 process was warranted. This was done to ensure a comprehensive review of the scientific data, frequent public input through public comment periods and workshops, and an independent scientific review by the SRP.

This report will be presented as an informational item at a public meeting of the members of the Air Resources Board. The report along with all comments will be forwarded to the Department of Health Services (DHS) Tobacco Control Program for appropriate action under their mandate as the State's lead agency for addressing health effects related to tobacco use.

OEHHA, with the assistance of scientists from the DHS, had primary responsibility for the preparation of this assessment. ARB provided assistance with the ETS-related exposure data as well as with report reproduction, workshop organization, and mailouts.

OEHHA and ARB sponsored a workshop in October 1992 to obtain public input early in the evaluation of ETS health effects and exposure in California. At the workshop, preliminary thoughts on the direction of the ETS assessment were discussed with participants, which included individuals from local, state, and federal government agencies, universities and other research organizations, representatives of the tobacco industry, and public interest groups.

The development of the assessment involved extensive literature review, document development, public

workshops, public comment and scientific peer review followed by document revision. Public release of reviews on each major area of health effects occurred as they were prepared. The first two documents (*Respiratory Health Effects of ETS* and *The Role of ETS in Cancers Other Than Lung Cancer*) were mailed in May 1994; the public comment period was May 2 to June 24, 1994, and a public workshop on these documents was held June 14, 1994. Subsequent documents were released with public comment periods (and public workshops) as follows: September 1994 release of *Cardiovascular Health Effects of Exposure to ETS*, public comment period September 2 to November 4, 1994 (workshop: October 4, 1994) (extended deadline due to late mailing of tables); March 1995 release of *Developmental and Reproductive Effects of Exposure to ETS*, public comment period March 3 to April 24, 1995 (workshop: April 4, 1995); September 1995 release of *ETS: Exposure Measurements and Prevalence*, public comment period September 1 to October 16, 1995 (workshop: October 3, 1995); and January 1996 release of *Carcinogenic Effects of Exposure to ETS, Excerpt: ETS and Lung Cancer*, public comment period January 26 to April 1, 1996 (workshop: March 25, 1996). Following the public comment period, each document was revised to respond to comments received and updated to include critical new studies; these revised documents were compiled to form the Final Draft for Scientific, Public, and SRP Review, *Health Effects of Exposure to Environmental Tobacco Smoke*, released in February 1997. The Final Draft had a public comment period of March 7 to May 5, 1997 (public forum: April 17, 1997).

The Final Draft along with Appendices A and B, which summarize and respond to comments received during the formal comment periods, were reviewed by the SRP and discussed at its meeting on June 19, 1997. Several newly published studies were added to the final document at the request of the SRP (*e.g.*, the full report of Kawachi *et al.*'s analysis of cardiovascular disease risk in the Nurse's Health study, published after the release of the Final Draft, in which it was reported as an abstract). The SRP's Findings as a result of its review of the Final Draft are included in Attachment I. As noted in the Findings transmittal letter from SRP Chairman Dr. James N. Pitts, "the Panel views ETS as a toxic air contaminant, and it has a major impact on public health."

Authors and Acknowledgements

This document was prepared by the Reproductive and Cancer Hazard Assessment Section (RCHAS) and the Air Toxicology and Epidemiology Section (ATES) within the Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency (Cal/EPA). Lauren Zeise was the project officer with overall responsibility for the contents of this report. Amy Dunn coordinated the development of the draft chapters and their revision, the public workshops, and the finalization of the full report. James Donald played a key role in the planning and development of Chapters 3, 4 and 5. Amy Dunn and Lauren Zeise were the editors of this report.

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As described in the preface, the final document was preceded by a final draft and by earlier external review drafts of each topic area which were released for public review and comment. The authors wish to thank those who sought to improve the quality of this report with their comments, and are particularly grateful to the members of the Scientific Review Panel, especially the leads on ETS, Craig Byus, Gary Friedman and Stanton Glantz as well as former panel member Charles Becker, all of whom provided guidance and detailed suggestions. Special thanks to Jennifer Jinot and Steven Bayard of U.S. EPA, and Ira Tager, Kathy Hammond, Neil Benowitz, John Balmes and John Pierce. Thanks also go to James Collins, John Faust, Jeff Fowles, Andrew Salmon, Martha Sandy and David Ting, for assistance with the

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Table of Contents

Preface.....i

Authors and Acknowledgements.....iii

Executive Summary.....ES-1

Attachment I: Scientific Review Panel Findings.....ES-10

1 Introduction

1.0 Impact of ETS on the Health of Californians..... 1-1

1.1 Organization of the Report..... 1-1

1.2 Definition of ETS..... 1-2

1.3 Methodology..... 1-2

1.4 Weight-of-Evidence Evaluations..... 1-6

Table..... 1-8

References..... 1-9

2 Exposure Measurement and Prevalence

2.1 Introduction..... 2-1

2.2 Properties of ETS and Its Constituents..... 2-2

2.3 Exposure Measurement: ETS Concentrations in Indoor Environments..... 2-5

2.4 Exposure Measurement: Biological Markers..... 2-12

2.5 Exposure Measurement: Use of Questionnaires..... 2-21

2.6 Exposure Prevalence and Determinants..... 2-24

2.7 Chapter Summary and Conclusions..... 2-36

Figures..... 2-39

Tables..... 2-46

References..... 2-62

3 Developmental Toxicity I: Perinatal Manifestations

3.1 Introduction..... 3-1

3.2 Fetal Growth..... 3-1

3.3 Spontaneous Abortion and Perinatal Mortality..... 3-24

Congenital Malformations..... 3-30

3.5 Chapter Summary and Conclusions..... 3-35

Figures..... 3-37

Tables..... 3-39

References..... 3-48

4 Developmental Toxicity II: Postnatal Manifestations

4.1 Introduction..... 4-1

4.2 Sudden Infant Death Syndrome..... 4-2

4.3 Cognition and Behavior in Children..... 4-12

4.4 Postnatal Physical Development..... 4-23

4.5 Respiratory Development and Function..... 4-28

4.6 Chapter Summary and Conclusions..... 4-29

Tables..... 4-30

References..... 4-40

5 Reproductive Effects

5.1 Introduction..... 5-1

5.2 Female Fertility and Fecundability..... 5-1

5.3 Other Female Reproductive Effects..... 5-8

5.4 Male Reproductive Toxicity..... 5-10

5.5 Chapter Summary and Conclusions..... 5-11

Tables..... 5-13

References..... 5-15

6 Respiratory Health Effects

6.0 Introduction..... 6-1

6.1 Acute Health Effects..... 6-1

6.2 Chronic Health Effects..... 6-33

6.3 Susceptible Populations..... 6-58

6.4 Chapter Summary and Conclusions..... 6-66

References..... 6-67

7 Carcinogenic Effects

7.0 Introduction..... 7-1

7.1 All Cancers (combined)..... 7-3

7.2 ETS and Lung Cancer..... 7-14

7.3 ETS and Cancer Sites Other Than Lung that are Associated with Active Smoking: Nasal Sinus, Cervical and Bladder..... 7-31

7.4 ETS and Cancer Sites Where Evidence for the Role of Active Smoking is Equivocal: Breast, Stomach, Brain, Leukemia, Lymphomas and Non-Hodgkin's Lymphomas, Other Rare Childhood Cancers..... 7-41

7.5 Chapter Summary and Conclusions..... 7-58

Tables..... 7-60

References..... 7-84

8 Cardiovascular Effects

8.0 Introduction..... 8-1

8.1 Description of Epidemiologic Studies..... 8-4

8.2 Discussion of Epidemiologic Studies..... 8-23

8.3 Other Supportive Evidence..... 8-28

8.4 Chapter Summary and Conclusions..... 8-37

Tables..... 8-39

References..... 8-66

Appendix A: Summary of Public Comments and Responses.....A-1

Appendix B: Summary of Public Comments and Responses on the February 1997 Final Draft.....B-1

List of Tables and Figures by Chapter

Executive Summary

Table ES.1 Health Effects Associated with Exposure to Environmental Tobacco Smoke

Table ES.2 Estimated Annual Morbidity and Mortality in Nonsmokers Associated with ETS Exposure

1 Introduction

Table 1.1 Estimated Annual Morbidity and Mortality in Nonsmokers Associated with ETS Exposure

2 Exposure Measurement and Prevalence

List of Figures:

Figure 2.1 Plasma Cotinine Concentrations in Self-Reported Smokers and Nonsmokers

Figure 2.2 Urinary Cotinine of Breast-Fed Infants in Relation to Maternal Cigarette Smoking

Figure 2.3 Percent of Nonsmokers in California Reporting ETS Exposure

Figure 2.4 Reported Average Daily ETS Exposure Duration in California

Figure 2.5 Relative Person-Minutes of ETS Exposure in Different Environments

Figure 2.6 Adult Smoking Prevalence: California and the United States (1965-1995)

Figure 2.7 Linear Trend in Per Capita Consumption of Cigarettes in California Before and After Proposition 99 Taxation Program

List of Tables:

Table 2.1 Influence of Puff Volume and Filter Ventilation on Deliveries of Particulate Matter and Carbon Monoxide in Mainstream and Sidestream Smoke

Table 2.2 Chemical Constituents of Tobacco Smoke that Have Been Classified or Identified as to Their Carcinogenicity, Reproductive Toxicity or Other Health Hazard

Table 2.3 Mean Concentrations of Nicotine and Cotinine in the Saliva, Plasma, and Urine of ETS-Exposed Volunteers

Table 2.4 Comparison of Biomarkers in Unexposed and ETS-Exposed Nonsmokers, and Active Smokers

Table 2.5 Cut-Off, Sensitivity, and Specificity of Biomarkers for Discriminating True Smoking Status

Table 2.6 Studies of Cotinine Measurements in Self-Reported Nonsmokers and Criteria Used to Distinguish Smokers From Nonsmokers

Table 2.7 Concentrations of Nicotine and Cotinine in Mothers' Milk

Table 2.8 Studies with Information on ETS Exposure Prevalence in California and the U.S.: Adults and Adolescents

Table 2.9 Studies with Information on ETS Exposure Prevalence in California and the U.S.: Infants and Children

3 Developmental Toxicity I: Perinatal Manifestations

List of Figures:

Figure 3.1: Summary of Differences in Mean Birthweight and 95% Confidence Intervals Between ETS Exposed and Unexposed Pregnancies, by Definition of ETS and Study Size

Figure 3.2: Odds Ratio (Log Scale) and 95% Confidence Interval for the Association of Low Birthweight and ETS, by Definition of ETS and Study Size

List of Tables:

Table 3.1: Studies of Birthweight and ETS Exposure Defined by Paternal Smoking Status

Table 3.2: Studies of Fetal Growth and ETS Exposure at Home Defined by Paternal Smoking Status

Table 3.3: Studies of Fetal Growth and ETS Exposure of Maternal Non-Smokers from Multiple ETS Sources

Table 3.4: Studies of Fetal Growth and ETS Exposure Determined by Biomarkers

Table 3.5: ETS Exposure in Relation to Spontaneous Abortion and Perinatal Death

Table 3.6: ETS Exposure and Congenital Malformations

Table 3.7: Animal Studies of Tobacco Smoke Exposure and Fetal Growth

4 Developmental Toxicity II: Postnatal Manifestations

Table 4.1: Sudden Infant Death Syndrome (SIDS): Studies that Assessed Some Source of Postnatal ETS Exposure

Table 4.2: Cognition in Children: Studies that Assessed Some Source of Postnatal ETS Exposure

Table 4.3: Behavior in Children: Studies that Assessed Some Source of Postnatal ETS Exposure

Table 4.4: Height Growth in Children: Studies that Assessed Some Source of Postnatal ETS Exposure

5 Reproductive Effects

Table 5.1: ETS Exposure and Infertility or Fecundability: Adult Exposure

Table 5.2: ETS Exposure and Infertility or Fecundability: Childhood Exposure

6 Respiratory Health Effects

List of Tables

Table 6.1: Studies Cited by U.S. EPA (1993) as Evidence Supporting a Causal Relation Between ETS Exposure and Increased Episodes and Severity of Asthma in Children

Table 6.2: Controlled Exposures of Asthmatic Subjects to ETS

Table 6.3: Studies of Middle Ear Effusion (MEE) and Otitis Media (OM) vs. ETS Exposure Reviewed by the Surgeon General (1986), NRC (1986), or U.S. EPA (1992).

Table 6.4: Studies of Middle Ear Effusion (MEE) or Otitis Media (OM) vs. ETS Exposure Not Reviewed by the Surgeon General (1986), NRC (1986), or U.S. EPA (1992).

Table 6.5 Studies Excluded from Meta-Analysis of ETS and Childhood Asthma Induction

Table 6.6 ETS Exposure Relationship with Pulmonary Function, Hospitalizations and Disease Severity in Children with Cystic Fibrosis

List of Figures

Figure 6.1: Reported risk ratios and 95% confidence intervals for studies that used clinically recognized asthma as an outcome

Figure 6.2: Reported risk ratios and 95% confidence intervals for studies that used "wheezing bronchitis" or "chronic wheezing/whistling in the chest" as an outcome

7 Carcinogenic Effects

List of Tables

Table 7.1 Exposure to Spouse's Smoking and Relative Risk (RR) of All Cancers in Adults

Table 7.2A Hair Concentrations of Nicotine and Cotinine in Women and Their Newborn Infants

Table 7.2B 4-Aminobiphenyl Hemoglobin Adduct Concentrations in Pregnant Women and Fetuses by Exposure to Tobacco Smoke

Table 7.2C Cotinine and PAH-Albumin Levels in Mothers and Their Preschool Children

Table 7.3 Maternal Smoking During Index Pregnancy and Risk of All Childhood Cancers Combined

Table 7.4 Study Characteristics of the Four U.S. Case-Control Studies of Lung Cancer and ETS Published Since 1991

Table 7.5 Association Between Risk of Lung Cancer in Lifetime Nonsmoking Females and Exposure to Spousal Smoking

Table 7.5B Risk of Lung Cancer in Nonsmoking Women and Men: A Cohort Analysis

Table 7.6 Association Between Risk of Lung Cancer and ETS Exposures From Parents and Other Household Members

Table 7.7 Studies on ETS Exposure at the Workplace and Lung Cancer Among Lifetime Nonsmoking Subjects

Table 7.8 Association Between Passive Smoke Exposure and Risk of Nasal Sinus Cancer in Nonsmokers

Table 7.9 Relationship Between Active and Passive Smoke Exposure and Risk of Cervical Cancer

Table 7.10 Nicotine and Cotinine Measured in the Cervical Mucus of Smokers, Passive Smokers, and Nonsmokers

Table 7.11 Passive Smoking and Bladder Cancer Among Nonsmokers

Table 7.12 Mean Levels of Hemoglobin Adducts of 4- and 3-Aminobiphenyls in Nonsmokers

Table 7.13 Mean Levels of 4-ABP Hemoglobin Adducts (PG/G of Hemoglobin) Among Smokers and Nonsmokers by Acetylator Phenotype

Table 7.14 Brain Tumors in Children and Exposure to Parent's Smoking

Table 7.15 Maternal or Parental Smoking During Pregnancy and Childhood Leukemia

Table 7.16 Association Between Exposure to Passive Smoking and Risk of Non-Hodgkins Lymphoma and Lymphoma in Children

8 Cardiovascular Effects

List of Tables

Table 8.1 Cohort Studies on ETS Exposure and Heart Disease

Table 8.2 Case control Studies on ETS Exposure and Heart Disease

Table 8.3 Risks of Heart Disease and Active Smoking in Women

Table 8.4 Risks of Heart Disease and Active Smoking in Women By Age

Table 8.5 Effect of Exposure to ETS on Exercise Tolerance

Table 8.6 Effect of Exposure to ETS on Lipid Profile in Children

Table 8.7 Platelet Sensitivity to Antiaggregatory Prostaglandins Before and After Exposure to ETS

Table 8.8 Measures of Platelet Function in Relation to Exposure to Active Smoking and Passive Smoking

Table 8.9 Carotid Artery Intimal-Medial Thickness (IMT) as Measured by B-mode Ultrasound in Current Smokers, Exsmokers, Never Smokers

Table 8.10 Endothelium-Dependent Arterial Dilatation in Active Smokers, Never Smokers exposed to ETS, and Never Smokers Not Exposed

Executive Summary

Exposure to environmental tobacco smoke (ETS) has been linked to a variety of adverse health outcomes. Many Californians are exposed at home, at work and in public places. In the comprehensive reviews published as *Reports of the Surgeon General* and by the U.S. Environmental Protection Agency (U.S. EPA) and the National Research Council (NRC), ETS exposure has been found to be causally associated with respiratory illnesses, including lung cancer, childhood asthma and lower respiratory tract infections. Scientific knowledge about ETS-related effects has expanded considerably since the release of these reviews. The State of California has therefore undertaken a broad review of ETS, covering the major health endpoints potentially associated with ETS exposure: perinatal and postnatal manifestations of developmental toxicity, adverse impacts on male and female reproduction, respiratory disease, cancer, and cardiovascular disease. A "weight of evidence" approach has been used to describe the body of evidence to conclude whether or not ETS exposure is causally associated with a particular effect. Because the epidemiological data are extensive, they serve as the primary basis for assessment of ETS-related effects in humans. The report also presents an overview on measurements of ETS exposure, particularly as they relate to characterizations of exposure in epidemiological investigations, and on the prevalence of ETS exposure in California and nationally.

ETS, or "secondhand smoke", is the complex mixture formed from the escaping smoke of a tobacco product, and smoke exhaled by the smoker. The characteristics of ETS change as it ages and combines with other constituents in the ambient air. Exposure to ETS is also frequently referred to as "passive smoking", or "involuntary tobacco smoke" exposure. Although all exposures of the fetus are "passive" and "involuntary", for the purposes of this review *in utero* exposure resulting from maternal smoking during pregnancy is not considered to be ETS exposure.

General Findings

ETS is an important source of exposure to toxic air contaminants indoors. There is also some exposure outdoors, in the vicinity of smokers. Despite an increasing number of restrictions on smoking and increased awareness of health impacts, exposures in the home, especially of infants and children, continue to be a public health concern. ETS exposure is causally associated with a number of health effects. Listed in Table ES.1 are the developmental, respiratory, carcinogenic and cardiovascular effects for which there is sufficient evidence of a causal relationship, including fatal outcomes such as sudden infant death syndrome and heart disease mortality, as well as serious chronic diseases such as childhood asthma. There are in addition effects for which evidence is suggestive of an association but further research is needed for confirmation. These include spontaneous abortion, cervical cancer, and

exacerbation of asthma in adults (Table ES.1). Finally, it is not possible to judge on the basis of the current evidence the impact of ETS on a number of endpoints, including congenital malformations, changes in female fertility and fecundability, male reproductive effects, rare childhood cancers and cancers of the bladder, breast, stomach, brain, hematopoietic system, and lymphatic system.

Table ES.1

Health Effects Associated with Exposure to Environmental Tobacco Smoke

Effects Causally Associated with ETS Exposure
Developmental Effects
Fetal Growth: Low birthweight or small for gestational age
Sudden Infant Death Syndrome (SIDS)
Respiratory Effects
Acute lower respiratory tract infections in children (*e.g.*, bronchitis and pneumonia)
Asthma induction and exacerbation in children
Chronic respiratory symptoms in children
Eye and nasal irritation in adults
Middle ear infections in children
Carcinogenic Effects
Lung Cancer
Nasal Sinus Cancer
Cardiovascular Effects
Heart disease mortality
Acute and chronic coronary heart disease morbidity

Effects with Suggestive Evidence of a Causal Association with ETS Exposure
Developmental Effects
Spontaneous abortion
Adverse impact on cognition and behavior
Respiratory Effects
Exacerbation of cystic fibrosis
Decreased pulmonary function
Carcinogenic Effects
Cervical cancer

Many Californians are exposed to ETS, and the number of people adversely affected may be correspondingly large. Table ES.2 presents morbidity and mortality estimates for health effects causally associated with ETS exposure. For cancer, cardiovascular and some respiratory endpoints, estimates are derived from figures published for the U.S. population, assuming that the number affected in California would be 12% of the total. The estimates for middle ear infection, sudden infant death syndrome and low birthweight were derived using information on prevalence of ETS exposure in California and the U.S.

Relative risk estimates associated with some of these endpoints are small, but because the diseases are common the overall impact can be quite large. A relative risk estimate of 1.3 for heart disease mortality in nonsmokers is supported by the collective evidence; this corresponds to a lifetime risk of death of roughly 1 to 3% for exposed nonsmokers and approximately 4,000 deaths annually in California. The relative risk estimate of 1.2 to 1.4 associated with low birthweight implies that ETS may impact fetal growth of 1,200 to 2,200 newborns in California, roughly 1 to 2% of newborns of nonsmokers exposed at home or work. ETS may exacerbate asthma (RR $\approx$ 1.6 to 2) in 48,000 to 120,000 children in California. Large impacts are associated with relative risks for respiratory effects in children such as middle ear infection (RR $\approx$ 1.62), and lower respiratory disease in young children (RR $\approx$ 1.5 to 2). Asthma induction (RR $\approx$ 1.75 to 2.25) may occur in as many as 0.5 to 2% of ETS-exposed children. ETS exposure may be implicated in 120 SIDS deaths per year in California (RR $\approx$ 3.5), with a risk of death to 0.1% of infants exposed to ETS in their homes. Lifetime risk of lung cancer death related to ETS-exposed nonsmokers may be about 0.7% (RR $\approx$ 1.2). For nasal sinus cancers, observed relative risks have ranged from 1.7 to 3.0, but future studies are needed to confirm the magnitude of ETS-related risks.

Specific Findings and Conclusions

Exposure Measurement and Prevalence

ETS is a complex mixture of chemicals generated during the burning and smoking of tobacco products. Chemicals present in ETS include irritants and systemic toxicants such as hydrogen cyanide and sulfur dioxide, mutagens and carcinogens such as benzo(a)pyrene, formaldehyde and 4-aminobiphenyl, and the reproductive toxicants nicotine, cadmium and carbon monoxide. Many ETS constituents have been identified as hazardous by state, federal and international agencies. To date, over 50 compounds in tobacco smoke have been identified as carcinogens and six as developmental or reproductive toxicants under California's Proposition 65 (California Health and Safety Code 25249.5 *et seq.*).

Exposure assessment is critical in epidemiological investigations of the health impacts of ETS, and in evaluating the effectiveness of strategies to reduce exposure. Exposure can be assessed through the measurement of indoor air concentrations of ETS constituents, through surveys and questionnaires, or more directly through the use of personal monitors and the measurement of biomarkers in saliva, urine and blood. There are advantages and

Table ES.2

Estimated Annual Morbidity and Mortality IN NONSMOKERS Associated with ETS Exposure

Condition	Number of People or Cases[a]	
	in the U.S.	in California
Developmental Effects		
Low birthweight	÷ 9,700 - 18,600 cases[b]	÷ 1,200 - 2,200 cases[b]
Sudden Infant Death Syndrome (SIDS)	÷ 1,900 - 2,700 deaths[b]	÷ 120 deaths[b]
Respiratory Effects in Children		
Middle ear infection	0.7 to 1.6 million physician office visits[b]	78,600 to 188,700 physician office visits[b]
Asthma induction	8,000 to 26,000 new cases[c]	960 to 3120 new cases[c]

Asthma exacerbation	400,000 to 1,000,000 children[c]	48,000 to 120,000 children[c]
Bronchitis or pneumonia in infants and toddlers (18 months and under)	150,000 to 300,000 cases[c] 7,500 to 15,000 hospitalizations[c] 136 - 212 deaths[c]	18,000 to 36,000 cases[c] 900 to 1800 hospitalizations[c] 16 - 25 deaths[c]
Cancer		
Lung	3000 deaths[c]	360 deaths[c]
Nasal sinus	N/A[d]	N/A[d]
Cardiovascular Effects		
Ischemic heart disease	35,000 - 62,000 deaths[c]	4,200 - 7,440 deaths[c]

[a] The numbers in the table are based on maximum likelihood estimates of the relative risk. As discussed in the body of the report, there are uncertainties in these estimates, so actual impacts could be somewhat higher or lower than indicated in the table. The endpoints listed are those for which there is a causal association with ETS exposure based on observations of effects in exposed human populations.

[b] California estimates for low birthweight, SIDS, and middle ear infection (otitis media) are provided in Chapters 3, 4, and 6, respectively. U.S. estimates are obtained by dividing by 12%, the fraction of the U.S. population residing in California.

[c] Estimates of mortality in the U.S. for lung cancer and respiratory effects, with the exception of middle ear infection (otitis media), come from U.S. EPA (1992). U.S. range for heart disease mortality reflects estimates reported in Wells (1988 and 1994), Glantz and Parmley (1991), Steenland (1992). California predictions are made by multiplying the U.S. estimate by 12%, the fraction of the U.S. population residing in the State. Because of decreases in smoking prevalence in California in recent years, the number of cases for some endpoints may be somewhat overestimated, depending on the relative impacts of current versus past ETS exposures on the health endpoint.

[d] Estimates of the impact of ETS exposure on the occurrence of nasal sinus cancers are not available at this time.

disadvantages associated with the various techniques, which must be weighed in interpreting study results. One important consideration in epidemiologic studies is misclassification of exposure. Studies on the reliability of questionnaire responses indicate qualitative information obtained is generally reliable, but that quantitative information may not be. Also, individuals are often unaware of their ETS exposure, particularly outside the home. In studies using both self-reporting and biological markers, the exposure prevalence was higher when determined using biological markers.

Available data suggest that the prevalence of ETS exposure in California is lower than elsewhere in the U.S. Among adults in California, the workplace, home and other indoor locations all contribute significantly to ETS exposure. For children the most important single location is the home. Over the past decade ETS exposures in California have decreased significantly in the home, workplace and in public places. Over the same period, restrictions on smoking in enclosed worksites and public places have increased (*e.g.*, Gov. Code, Section 19994.30 and California Labor Code, Section 6404.5) and the percentage of the adults who smoke has declined. Decreases in tobacco smoke exposure may not be experienced for some population subgroups, as patterns of smoking shift with age, race, sex and socioeconomic status. For example, from 1975 to 1988, the overall smoking prevalence among 16 to 18 year olds declined, but after 1988 the trend reversed.

Perinatal Manifestations of Developmental Toxicity

ETS exposure adversely affects fetal growth, with elevated risks of low birth weight or "small for gestational age" observed in numerous epidemiological studies. The primary effect observed, reduction in mean birthweight, is small in magnitude. But if the distribution of birthweight is shifted lower with ETS exposure, as it appears to be with active smoking, infants who are already compromised may be pushed into even higher risk categories. Low birthweight is associated with many well-recognized problems for infants, and is strongly associated with perinatal mortality.

The impact of ETS on perinatal manifestations of development other than fetal growth is less clear. The few studies examining the association between ETS and perinatal death are relatively non-informative, with only two early studies showing increased risk associated with parental smoking, and with the sparse data on stillbirth not indicative of an effect. Studies on spontaneous abortion are suggestive of a role for ETS, but further work is needed, particularly as a recent report did not confirm the findings of four earlier studies. Although epidemiological studies suggest a moderate association of severe congenital malformations with paternal smoking, the findings are complicated by the use of paternal smoking status as a surrogate for ETS exposure, since a direct effect of active smoking on sperm cannot be ruled out. In general, the defects implicated differed across the studies, with the most consistent association seen for neural tube defects. At this time, it is not possible to determine whether there is a causal association between ETS exposure and this or other birth defects.

Postnatal Manifestations of Developmental Toxicity

Numerous studies have demonstrated an increased risk of sudden infant death syndrome, or "SIDS," in infants of mothers who smoke. Until recently it has not been possible to separate the effects of postnatal ETS exposure from those of prenatal exposure to maternal active smoking. Recent epidemiological studies now have demonstrated that postnatal ETS exposure is an independent risk factor for SIDS.

Although definitive conclusions regarding causality cannot yet be made on the basis of available epidemiological studies of cognition and behavior, there is suggestive evidence that ETS exposure may pose a hazard for neuropsychological development. With respect to physical development, while small

but consistent effects of active maternal smoking during pregnancy have been observed on height growth, there is no evidence that postnatal ETS exposure has a significant impact in otherwise healthy children. As discussed in greater detail below, developmental effects of ETS exposure on the respiratory system include lung growth and development, childhood asthma exacerbation, and, in children, acute low respiratory tract illness, middle ear infection and chronic respiratory symptoms.

Female and Male Reproductive Toxicity

Though active smoking by women has been found to be associated with decreased fertility in a number of studies, and tobacco smoke appears to be anti-estrogenic, the epidemiological data on ETS exposure and fertility are not extensive and show mixed results, and it is not possible to determine whether ETS affects fecundability or fertility. Regarding other female reproductive effects, while studies indicate a possible association of ETS exposure with early menopause, the analytic methods of these studies could not be thoroughly evaluated, and therefore at present, there is not firm evidence that ETS exposure affects age at menopause. Although associations have been seen epidemiologically between active smoking and sperm parameters, conclusions can not be made regarding ETS exposure and male reproduction, as there is very limited information available on this topic.

Respiratory Effects

ETS exposure produces a variety of acute effects involving the upper and lower respiratory tract. In children, ETS exposure can exacerbate asthma, and increases the risk of lower respiratory tract illness, and acute and chronic middle ear infection. Eye and nasal irritation are the most commonly reported symptoms among adult nonsmokers exposed to ETS. Odor annoyance has been demonstrated in several studies.

Regarding chronic health effects, there is compelling evidence that ETS is a risk factor for induction of new cases of asthma as well as for increasing the severity of disease among children with established asthma. In addition, chronic respiratory symptoms in children, such as cough, phlegm, and wheezing, are associated with parental smoking. While the results from all studies are not wholly consistent, there is evidence that childhood exposure to ETS affects lung growth and development, as measured by small, but statistically significant decrements in pulmonary function tests; associated reductions may persist into adulthood. The effect of chronic ETS exposure on pulmonary function in otherwise healthy adults is likely to be small, and unlikely by itself to result in clinically significant chronic disease. However, in combination with other insults (*e.g.*, prior smoking history, exposure to occupational irritants or ambient air pollutants), ETS exposure could contribute to chronic respiratory impairment in adults. In addition, regular ETS exposure in adults has been reported to increase the risk of occurrence of a variety of lower respiratory symptoms.

Children are especially sensitive to the respiratory effects of ETS exposure. Children with cystic fibrosis are likely to be more sensitive than healthy individuals. Several studies of patients with cystic fibrosis, a disease characterized by recurrent and chronic pulmonary infections, suggest that ETS can exacerbate the condition. Several studies have shown an increased risk of atopy (a predisposition to develop IgE antibodies against common allergens, which can then be manifested as a variety of allergic conditions) in children of smoking mothers, though the evidence regarding this issue is mixed.

Carcinogenic Effects

The role of ETS in the etiology of cancers in nonsmokers was explored, as smoking is an established

cause of a number of cancers (lung, larnyx, oral cavity, esophagus and bladder), and a probable cause of several others (cervical, kidney, pancreas, and stomach). Also, ETS contains a number of constituents which have been identified as carcinogens.

Reviews published in the 1986 *Report of the Surgeon General,* by the National Research Council in 1986, and by the U.S. EPA in 1992 concluded that ETS exposure causes lung cancer. Three large U.S. population-based studies and a smaller hospital-based case control study have been published since the completion of the U.S. EPA review. The population-based studies were designed to and have successfully addressed many of the weaknesses for which the previous studies on ETS and lung cancer have been criticized. Results from these studies are compatible with the causal association between ETS exposure and lung cancer already reported by the U.S. EPA, Surgeon General, and National Research Council. Of the studies examining the effect of ETS exposure on nasal sinus cancers, all three show consistent associations, presenting strong evidence that ETS exposure increases the risk of nasal sinus cancers in nonsmoking adults. Further study is needed to characterize the magnitude of the risk of nasal sinus cancer from ETS exposure.

The epidemiological and biochemical evidence suggest that exposure to ETS may increase the risk of cervical cancer. Positive associations were observed in two of three case-control studies and a statistically nonsignificant positive association was observed in the only cohort study conducted. Findings of DNA adducts in the cervical epithelium as well as nicotine and cotinine in the cervical mucus of ETS-exposed nonsmokers provides biological plausibility.

For other cancer sites in adults, there has been limited ETS-related epidemiological research in general: there is currently insufficient evidence to draw any conclusion regarding the relationship between ETS exposure and the risk of occurrence. A review of the available literature clearly indicates the need for more research. For example, although compounds established as important in the etiology of stomach cancer are present in tobacco smoke, only a single cohort study has been performed for this site. Precursors of endogenously formed N-nitroso compounds suspected of causing brain tumors are present in high concentrations in ETS, and the one cohort and two case-control studies available suggest a positive association, but the results are based on small numbers and may be confounded by active smoking. In biochemical studies of nonsmokers, higher levels of hemoglobin adducts of the established bladder carcinogen, 4-aminobiphenyl, have been found in those exposed to ETS. However, no significant increases in bladder cancer were seen in the two epidemiological studies (case-control) conducted to date, although both studies were limited in their ability to detect an effect. Several compounds in tobacco smoke are associated with increased risk of leukemia, but only one small case-control study in adults, reporting an increased risk with ETS exposure during childhood, has been performed. Finally, all four studies on ETS exposure and breast cancer suggest an association, but in two of the studies the associations were present only in select groups, and in three studies there is either no association between active smoking and the risk of breast cancer or the association for active smoking is weaker than for passive smoking. Moreover, there is no indication of increasing risk with increasing intensity of ETS exposure. Still, results from a recent study suggest that tobacco smoke may influence the risk of breast cancer in certain susceptible groups of women, and this requires further investigation.

Regarding childhood cancers, it is unclear whether parental smoking increases risk overall, or for specific cancers such as acute lymphoblastic leukemia and brain tumors, the two most common cancers in children. The lack of clarity is due to the conflicting results reported and the limitations of studies finding no association. The epidemiological data on ETS exposure and rare childhood cancers also provide an inadequate foundation for making conclusions regarding causality. Some studies found small increased risks in children in relation to parental smoking for neuroblastoma, Wilm's tumor, bone and

soft-tissue sarcomas, but not for germ cell tumors. Studies to date on these rare cancers have been limited in their power to detect effects. The impact of ETS exposure on childhood cancer would benefit from far greater attention than it has received to date.

Cardiovascular Effects

The epidemiological data, from prospective and case-control studies conducted in diverse populations, in males and females and in western and eastern countries, are supportive of a causal association between ETS exposure from spousal smoking and coronary heart disease (CHD) mortality in nonsmokers. To the extent possible, estimates of risk were determined with adjustment for demographic factors, and often for other factors related to heart disease, such as blood pressure, serum cholesterol level and obesity index. Risks associated with ETS exposure were almost always strengthened by adjustment for other cofactors. For nonsmokers exposed to spousal ETS compared to nonsmokers not exposed, the risk of CHD mortality is increased by a factor of 1.3. The association between CHD and risk is stronger for mortality than for non-fatal outcomes, including angina.

Data from clinical studies suggest various mechanisms by which ETS causes heart disease. In a number of studies in which nonsmokers were exposed to ETS, carotid wall thickening and compromise of endothelial function were similar to, but less extensive than those experienced by active smokers. Other effects observed include impaired exercise performance, altered lipoprotein profiles, enhanced platelet aggregation, and increased endothelial cell counts. These findings may account for both the short- and long-term effects of ETS exposure on the heart.

Attachment I

Review of the OEHHA Assessment of Environmental Tobacco Smoke by the Scientific Review Panel (SRP)

Interest in the health effects of second hand tobacco smoke on the part of members of the Scientific Review Panel (SRP) on Toxic Air Contaminants led to a request by the SRP for a health assessment of environmental tobacco smoke, and a collaborative agreement between the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board (ARB) to initiate such an assessment. SRP members reviewed the drafts as they were developed and participated in each of the workshops held as the document underwent public review (see Preface for details). The Final Draft reflected the input of SRP members, as well as that of other reviewers.

Specific changes made at the request of the SRP following its review of the Final Draft include the addition of new studies (e.g., the results of Kawachi *et al.*'s analysis of cardiovascular disease risk in the Nurse's Health study, published after the release of the Final Draft, in which it was reported as an abstract), a discussion of issues related to misclassification of smoking status and cancer risk, and clarifying language in the presentation of attributable risk estimates; minor editorial changes were also requested and made. The SRP discussed the assessment and made findings on the health effects of exposure to environmental tobacco smoke as a result of its review; these findings are included in this Attachment.

2. Copies of regulations from Boston, Brookline and Somerville. Copies are enclosed along with a copy of a comparison chart.

COMPARISON OF PROPOSED CAMBRIDGE ORDINANCE TO LOCAL COMMUNITIES

Restaurants

	Cambridge (current)	Cambridge (proposed)	Boston	Brookline	Somerville
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with bar area (same room)	50% nonsmoking section	no smoking in restaurant permit to allow smoking at bar/defined area with 6 feet barrier	no smoking in restaurant smoking permitted at bar/ 6 ft barrier	no smoking	no smoking in restaurant smoking permitted at bar/ 6 ft barrier with variance
Restaurant with bar in separate room	50% nonsmoking section	no smoking in restaurant permit to allow smoking in bar area	no smoking in restaurant smoking permitted at bar	no smoking in restaurant smoking permitted at bar with variance and ventilation	no smoking in restaurant smoking permitted at bar with variance
Bar	smoking permitted	permit to allow smoking if percentage of alcohol is greater than food *or* establishment is only 18 +	smoking permitted	no smoking	smoking permitted
Nightclubs	smoking permitted	permit to allow smoking during certain hours if 18+ and live entertainment	smoking permitted	no smoking	smoking permitted during certain hours if apply for a variance

1/25/99

Town of Brookline
Health Department
11 Pierce Street
Brookline, Massachusetts 02146
(617) 730-2300 fax (617) 730-2296

Patrick J. Maloney, MPAH
Acting Director of Public Health

The by-law revisions passed at the Special Town Meeting which began on Tuesday, November 15, 1994, continued Wednesday, and dissolved on Thursday, November 17, 1994 were approved by the Attorney General on March 8, 1995.

TOWN OF BROOKLINE
BY-LAW ARTICLE XLI - TOBACCO CONTROL

Section I. Definitions:

a. Tobacco - Cigarettes, cigars, snuff, or tobacco in any of its forms.
b. Smoking - The lighting of, or having in one's possession any lighted cigarette, cigar, pipe, or other tobacco product.
c. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco products by self-service, with or without assistance by a clerk or operator.
d. Minor - A person under eighteen years of age.
e. Employee - A person who performs services for wages or other consideration.
f. Employer - A person, partnership, association, corporation, trust, or other organized group, including the Town of Brookline and any department or agency thereof, which utilizes the services of three (3) or more employees.
g. Workplace - Any enclosed area of a structure in the Town of Brookline, at which three or more employees perform services for an employer.
h. Food Service Establishment - An establishment having one or more seats at which food is served to the public.
i. Function Room - A separate, enclosed room used exclusively for private functions within a food service establishment.
j. Bar/Lounge - An area within a food service establishment which is devoted primarily to serving alcoholic beverages for consumption by guests on the premises, and in which the consumption of food is only incidental to the consumption of such beverages.

Section II. Regulated Conduct

a. Food Service Establishments

1) All food service establishments shall be 100% non-smoking except as otherwise specifically permitted under this by-law.

2) Function rooms shall be exempt from the provisions of Section II. a. 1) until July 1, 1995.

3) Waiver of non-smoking provision for bars and lounges - The owner or operator of a food service establishment containing a bar/lounge may apply for a waiver of the non-smoking provision of Section II.a.1) with respect to the bar/lounge. The application shall state when the waiver shall terminate, provided, always, that such termination shall not be later than January 1, 2000. Application shall be made in writing to the Director of Public Health (Director), stating the reasons and justification for the request. Following no less than two weeks public notice, the Director shall conduct a public hearing on the request, at which the owner or operator shall present the request and the basis for the request. After the hearing the Director may grant the requested waiver, provided:

a) the owner or operator has owned or operated the establishment continuously since November 15, 1994;
b) on November 15, 1994, the establishment contained a bar/lounge according to the records of the Town;
c) the number of seats in the bar/lounge do[es] not exceed 25% of the establishment's total seating capacity;
d) the bar/lounge occupies a separate, enclosed room;
e) the bar/lounge is equipped with a separate ventilation system that provides an air circulation rate of at least 60 cubic feet per minute per person and exhausts air at a rate of at least 110% of supply to produce a negative air environment; and
f) the configuration of the establishment is not such as to require dining patrons to pass through any portion of the bar/lounge when entering or exiting the establishment.

4) The Director of Public Health may adopt regulations providing for the implementation of Section II. a. 3) of this by-law.

b. Public Places

1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior locations in which the public is permitted. This includes, but is not limited to, any health care facility, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops, and meetings of government agencies open to the public.

2) Taxi/Liverie services licensed by the Town of Brookline shall provide smoke-free vehicles in accordance with the following schedule:

a) As of 3/1/94, 25% of all vehicles
b) As of 1/1/95 100% of all vehicles

The restriction of smoking in taxi/liverie vehicles applies to drivers as well as passengers. Non-smoking vehicles shall be posted in such a manner that their smoke-free status can readily be determined from outside the vehicle.

3) Licensed Inns, Hotels, Motels, and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels, and Motels in the Town of Brookline must designate individual rooms as non-smoking in accordance with the following schedule:

a) As of 3/1/94, 25% of individual dwelling units or rooms.
b) As of 1/1/95, 50% of individual dwelling units or rooms.
c) As of 1/1/96, 90% of individual dwelling units or rooms.

c. Workplaces

1) Every employer shall establish, post, and implement a workplace smoking policy and shall, upon request, furnish a written copy of such smoking policy to any employee or to the Director of Public Health. A workplace smoking policy shall include a grievance procedure whereby an employee may seek relief if he/she is exposed to tobacco smoke in the course of his/her work duties. Upon written request by three or more employees, an employer may, but is not required to, designate a "Smoking Area", provided that such a smoking area shall not adversely affect the health and well-being of non-smoking employees or members of the public. An employer may furnish a separate employee lounge for smoking, no larger in floor area or seating capacity than the
employee lounge for non-smoking employees. All smoking in the workplace shall be prohibited on or before January 1, 1995.

2) Workplaces with function rooms must establish and post a workplace policy that states "Employees are not required to work at private functions in which smoking is allowed." Employees who do not want to work at such functions must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

3) Hotels must establish and post a workplace policy that states "Employees are not required to work in rooms in which smoking is allowed." Employees who do not want to work in such rooms must so inform their employer in writing, and employers must abide by their employees' stated wishes in this regard.

4) Food service establishments that permit smoking under the waiver provisions of Section II. a. 3) shall establish and post a workplace policy that states: "Employees are not required to work in the bar/lounge."

5) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions that require the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position requires continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

6) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

7) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring;

8) No establishment in which smoking is permitted pursuant to this by-law may designate more smoking positions, as a proportion of the total number of service positions, than the number of seats in [the] portion of the establishment in which smoking is permitted bears to the total number of seats legally permitted in the establishment.

9) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of G.L.C. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

10) Each establishment in which smoking is permitted pursuant to this by-law shall post, and make available to all job applicants, a statement inviting employees and job applicants to notify the Board of Selectmen regarding any violation of the policies in this section (Workplaces).

Section III. Posting

a. Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

b. Food service establishments in which smoking is permitted under the waiver provisions of Section II. a. 3) shall post in a conspicuous location, at each entrance used by the general public, a notice provided by the Director of Public Health. This notice, which shall not be smaller than 80 square inches nor larger than 120 square inches in overall area, shall state that smoking is permitted in the establishment and contain a warning concerning the risks of environmental tobacco smoke.

Section IV. Sale and Distribution of Tobacco Products

a. Permit - No person, firm, corporation, establishment, or agency shall sell tobacco products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits must be renewed annually by June 1st, at a fee set forth in the Department's Schedule of Fees and Charges.

b. Tobacco Vending Machines - The sale of tobacco products by means of tobacco vending machines is prohibited.

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c. Distribution of Tobacco Products - No person, firm, corporation, establishment, or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product "giveaways," or distribution of a tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance.

d. Sales to Minors - No person, firm, corporation, establishment, or agency shall sell tobacco products to a minor.

e. Advertising/Promotion - From and after January 1,1995, free-standing tobacco product displays in retail locations, where a tobacco product is accessible to the public, shall be within twenty feet and the unobstructed view of a check-out or cash register location.

Section V. Violations and Penalties

a. Any person who knowingly violates any provision of this bylaw, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of not more than $50 for each offense.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of not more than $100 for each offense.

c. Persons, firms, corporations, or agencies selling tobacco products to minors or selling tobacco products without a Tobacco Sales Permit shall be punished by a fine of not more than $200 per day for each day of such violation.

d. Employers who violate any provision of Section IIc shall be punished by a fine of not more than $100 per day for each day of such violation.

e. Violations of this bylaw may be dealt with in a non-criminal manner as provided in Article XXI, Sections 3(a) and 3(b) of the Town Bylaws.

Section VI. Separability

a. Each provision of this bylaw shall be construed as separate to the extent that if any section, sentence, clause, or phrase is held to be invalid for any reason, the remainder of the bylaw shall continue in full force and effect.

And to amend Article XXI, Section 3(b), by deleting references and provisions related to By-Law Articles XXXVI and XLIV and amending the reference to By-Law Article XLI to read:

ARTICLE XLI - TOBACCO CONTROL

Section V(a) Smoking in an area in which a "Smoking Prohibited by Law" sign or its equivalent is conspicuously displayed, or violation of any other provision of the by-law (Health Department)	$50.00
Section V(c) Sale of tobacco products to a minor, or sale of tobacco products without a permit (Health Department)	$200.00

The above noted changes were passed by a Majority Vote, which was so declared by the Moderator and is so recorded.

November 16, 1994.

ATTEST:

Patrick J. Ward
Town Clerk

jal/amnumar5

CITY OF SOMERVILLE, MASSACHUSETTS
BOARD OF HEALTH

REGULATIONS AFFECTING SMOKING IN CERTAIN PLACES

SECTION 1 -- STATEMENT OF PURPOSE

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac problems, allergies, and irritations to the eyes, nose and throat in both smokers and nonsmokers exposed to secondhand smoke. Therefore, these regulations are adopted pursuant to Massachusetts General Laws Chapter 111, Section 31, as reasonable health regulations designed to protect and improve the health of the residents of the City of Somerville.

SECTION 2 -- DEFINITIONS

As used in this regulation:

Bar means an establishment which is primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Bar area means an area of a restaurant which is primarily dedicated to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.

Employee means any individual who performs services for an employer in return for wages or profit.

Employer means any individual, partnership, association, corporation, trust or other organized groups of individuals, including the City of Somerville or any agency thereof, which regularly uses the services of two (2) or more employees.

Enclosed means a space bound by walls and under a roof.

Nonsmoking Area means any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.

Public Place means an enclosed, indoor area when open to and used by the general public, including but not limited to any such area comprised in: (a) any of the following facilities: licensed child care location; hospital, clinic and nursing home; library; school; municipal building; museum; retail store; retail food establishment; indoor sports arena; theater; auditorium; public transit facility; enclosed shopping mall; hair cutting establishment; laundromat; and (b) any elevator, stairwell, hall, entranceway; lobby of a bank, theater, inn, hotel or motel lobby; public restroom;(c) any room or hall when used for a public meeting; and (d) any building of a college or university. 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.

Restaurants means any establishment serving food for consumption on the premises. This includes cafeterias and cafeterias in the workplace.

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

Retail Store means any establishment selling goods or articles or personal services to the public.

Retail Tobacco Store means any establishment exclusively selling tobacco products.

School means any public or private school, other than a college or university, which has any students under the age of eighteen (18).

Seating Capacity means that capacity designated on the occupancy permit of a restaurant, theater or sports arena.

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

Indoor Sports Arena means any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice skating 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.

Workplace means any area within a structure or portion thereof at which two (2) or more employees perform services for their employer. It also includes employee lounges, restrooms, conference rooms, hallways, stairways and entranceways.

Ventilation means a mechanical system to remove tobacco smoke and exchange inside air by bringing in fresh air. Particulate air cleaners or filtration systems are not considered a ventilation system.

SECTION 3 -- PROHIBITION ON SMOKING IN PUBLIC PLACES

It is hereby declared that smoking in public places is dangerous and hazardous to the public health.

No person shall smoke in any public place except that smoking shall be permitted in specifically designated areas as hereinafter provided. No place governed by these regulations shall be designated as a smoking area in its entirety. Nothing in this section shall be construed to require the designation of smoking areas.

3.1 Restaurants

3.1.1 The prohibition on smoking in public places shall apply to all restaurants, except in specifically designated smoking areas. Smoking areas may be designated by the proprietor(s) or other person(s) in charge of a restaurant, except that restrooms, entranceways, and lobbies as well as places in which smoking is prohibited by the fire marshal, law or regulation may not be designated as smoking areas.

3.1.2 Each restaurant shall have a policy of asking seating preference of patrons. The owner, manager, or operator will be subject to fines as defined in these regulations if the restaurant fails to follow the policy or has no stated policy concerning asking the seating preference of patrons.

3.1.3 Nonsmoking areas shall comprise at least seventy-five percent (75%) of the seating capacity of the restaurant. Seats at the bar shall be included when determining seating capacity for the purpose of calculating the size of the nonsmoking area. Seating shall be so situated as to utilize existing physical barriers and/or ventilation systems to minimize the presence of smoking by-products in nonsmoking areas. The owner of the restaurant is not required to incur an expense as a result of this regulation.

3.1.4 The nonsmoking area shall be one integral area and shall not be located between two smoking areas.

3.1.5. Effective January 1, 2000, all restaurants shall be 100% smokefree including seats in the bar area.

3.1.6. A variance may be granted to allow smoking in a separate enclosed room provided it follows the provisions set forth in Section 9 of these regulations.

3.2 Museums, Libraries, Banks, Theaters, Haircutting Establishments, Laundromats, Hospitals, Clinics, Nursing Homes, Licensed Child Care Locations, Auditoriums, Indoor Sports Arenas, Beano Games, Hotels, Municipal Buildings, College and University Buildings. Smoking areas may be designated in museums; libraries; bank, theater, inn, hotel and motel lobbies; hospitals; clinics; nursing homes; auditoriums; indoor sports arenas; haircutting establishments; laundromats; meeting rooms and/or public assembly rooms used while these places are being used for Beano and Blitz games; municipal buildings; and college and university buildings; provided, however, that comparable nonsmoking areas of sufficient size and capacity are available and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, restrooms, and waiting areas in all the above facilities may NOT be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.

3.3 Taxis and Limousines. The prohibition on smoking in public places shall apply to taxis and limousines while operating within the boundaries of the City of Somerville.

3.4 Retail Stores. The prohibition on smoking in public places shall apply to retail stores doing business with the general public. Smoking areas may be designated in portions of said stores NOT open to the public and all areas within retail tobacco stores.

3.5 Enclosed Shopping Malls. No person shall smoke in any enclosed shopping mall except that smoking shall be permitted in specifically designated areas; provided, however, that comparable nonsmoking facilities of sufficient size and capacity are available and provided, further, that existing physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, restrooms, and waiting areas in all the above facilities may NOT be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked. The designated smoking area must have adequate ventilation facilities directly vented to the out of doors.

3.6 Areas Where Smoking is Optional. Not withstanding any other provision of these regulations, the following areas shall not be subject to the smoking restrictions of the regulations:

3.6.1 Any business which has been declared by its owner, operator, manager or person in charge to be a nonsmoking establishment in its entirety;

3.6.2 Bars;

3.6.3 Retail tobacco stores;

3.6.4 Private residences;

3.6.5 College and university dormitory rooms, occupied by one (1) or more residents, all of whom have requested in writing on the application for admission or dormitory housing form to reside in rooms where smoking is permitted;

3.6.6 Hotel and motel rooms rented to guests;

3.6.7 Hotel and motel conference/meeting rooms, and public and private assembly rooms while these places are being used for private functions;

3.6.8 Rooms or halls in any facility while being used for a private function in which the sponsor of the private function and not the owner or proprietor of the facility has control over the seating arrangement;

3.6.9 Private or semiprivate rooms of nursing homes and long-term care facilities, occupied by one (1) or more patients, all of whom are smokers who have requested in writing on the facilities' admission forms to be placed in rooms where smoking is permitted;

3.6.10 A completely enclosed private office used by an individual;

3.6.11 Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicles;

3.6.12 Performers upon the stage, provided that the smoking is part of a theatrical production.

3.7 Implementation

The proprietor(s) or other person(s) in charge of a public place shall prevent smoking in nonsmoking areas by:

3.7.1 Conspicuously posting a notice or sign at each entrance to the public place indicating smoking is prohibited therein except in specifically designated areas. In addition, conspicuously posting "Smoking" or "Nonsmoking" signs, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in every area where smoking is permitted or prohibited by this ordinance;

3.7.2 Arranging seating so that existing physical barriers, ventilation system and available space are utilized to minimize the exposure to smoke of persons in the nonsmoking area.

3.7.3 Asking patrons who may be smoking in the nonsmoking area either to refrain from smoking or to move to a smoking area;

3.7.4 Using any other means which may be appropriate and reasonable to enforce these regulations.

SECTION 4 – WORKPLACE

4.1 It shall be unlawful for any person to smoke in any public or private workplace except in a completely enclosed private office used by an individual or in a specifically designated smoking area.

4.2 Each employer may specifically designate enclosed areas in which employees may smoke, provided, however, that comparable nonsmoking areas of sufficient size and capacity are available and provided, further, that physical barriers and/or ventilation systems are used to segregate smoking areas from nonsmoking areas. Hallways, elevators, entranceways, stairwells, restrooms, and waiting areas in all the above facilities may not be designated as smoking areas. Areas designated as smoking and nonsmoking areas must be conspicuously marked.

4.3 Each person having control of premises upon which smoking is prohibited by this regulation, or his or her agent or designee, shall conspicuously display at entrances and other locations upon the premises an appropriate number of signs reading "Smoking Prohibited by Law" or "Smoking Prohibited by Law Except in Designated Smoking Areas."

4.4 It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation, whether present or not, to permit, or for his or her agent to permit, a violation of this regulation.

4.5 Any employee exposed to smoke or smoking by-products because of poor ventilation or inadequate non-smoking areas may file a complaint in writing to the employer. The employer shall respond in writing within fifteen (15) days to the complainant that he or she has inspected the area described in the complaint and has enforced the provisions of this section as provided herein. If after fifteen (15) days the employer has not satisfied the objecting employee, a complaint, in writing, may be filed with the Board of Health. The Board of Health shall determine if the complaint is valid and may hold hearings with the employer and with the employee who will be excused from work with compensation for the hearing.

SECTION 5 -- PROHIBITION ON SMOKING IN SCHOOLS

5.1 It shall be unlawful for any person, including all teaching and non-teaching personnel, to smoke in any public or private school at any time. Adult staff should represent positive role models for students under age eighteen (18).

5.2 The proprietor(s) or other person(s) in charge of a school shall conspicuously post a notice or sign at each entrance and in the gymnasium, auditorium, cafeteria, all restrooms, and the principal's office indicating that smoking is prohibited therein and to use any other means which may be appropriate and reasonable to enforce these regulations.

SECTION 6 -- ENFORCEMENT

6.1 Any person who smokes in a nonsmoking area shall be subject to a fine of twenty-five dollars ($25) for each violation. Each day on which any violation occurs shall be deemed a separate offense.

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

6.2.1 A fine of $50 for a first offense; $100 for a second offense and $200 for a third or subsequent offense; each day on which any violation exists shall be considered a separate offense; and

6.2.2 Suspension of any food service license issued by the Board of Health for that public place for a period of two days for each day of noncompliance.

SECTION 7 – OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations, or statutes.

SECTION 8 – SEVERABILITY

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 9 – VARIANCE

9.1 After a public hearing by the Board of Health, a variance may be granted provided enforcement of this regulation would do manifest injustice, and provided further that the applicant proves that the degree of protection of public health, safety and welfare can be achieved without strict application of the particular provision.

9.2 Regarding restaurants, this shall be evidenced by factors including but not limited to the following: such an area for which the variance is requested is separated by a floor to ceiling barrier, or such an area is at least six (6) feet from the perimeter of any food service area primarily dedicated to the service of food; such an area is conspicuously marked with signs that warn patrons of the dangers of environmental tobacco smoke; no person under the are of twenty-one (21) shall be seated in the smoking area. Every applicant should note that adherence to these or other standards shall not entitle said applicant to such a variance. The Board's decision shall be in writing and shall be submitted within sixty (60) days of the application. No denial of any application for a variance shall prevent any such applicant from reapplying. The Board may issue any such variance for a specified period of time. Nothing herein shall imply that the Board may not extend any such time limitation.

9.3 Every request for a variance shall be made in writing on a form provided by the Board of Health and shall state the specific variance sought and the reasons thereof. The fee for a variance request shall be determined by the Board of Health. Notice of a variance request must be published in a local newspaper at least two weeks before the scheduled date of the public hearing.

9.4 Any variance granted must be in writing with a copy available to the public at all reasonable hours in the office of the City Clerk and in the office of the Board of Health. Any variance granted must be posted on the premises in a prominent location for the duration that the variance is in effect.

SECTION 10 – EFFECTIVE DATE

These regulations effectively replace any previous regulations promulgated by the Board of Health as they relate to smoking.

Adopted:	February 26, 1992	David Osler, MD, Chairman
Effective:	July 1, 1992	Ann Elderkin, PA
		Helen Corrigan
Amended:	May 18, 1995	
Effective:	July 1, 1995	
Amended:	September 30, 1998	
Effective:	November 19, 1998	



Regulation

RESTAURANT SMOKING RESTRICTIONS

After having reviewed the record of testimony and public commentary, te Boston Public Health Commission arrives at the following findings:

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Boston and throughout the United States; and,

WHEREAS, there exists conclusive evidence that Environmental Tobacco Smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears nose and throat of both smokers and non-smokers; and,

WHEREAS, Environmental Tobacco Smoke causes the death of more than 53,000 Americans each year; and,

WHEREAS, the Environmental Protection Agency (EPA) has designated Environmental Tobacco Smoke to be a Class A carcinogen, similar to radon and asbestos, with no known safe level of exposure; and,

WHEREAS, children, the elderly, individuals with cardiovascular disease, individuals with impaired respiratory function, and asthmatics are among those people who are particularly susceptible to the harmful effects of inhaling Environmental Tobacco Smoke,

NOW THEREFORE the Boston Public Health Commission enacts the following regulation, to be adopted for the express purpose (1) to protect the public health and welfare by restricting smoking in restaurants; and, (2) to protect smoke-free air for non-smokers; and, (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke in an enclosed public area:

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Section I – Definitions

Bar: An establishment with a current license issued by the City of Boston to serve alcohol whose business is primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Bar Area of a Restaurant: That section of a restaurant which is primarily dedicated to the serving of alcoholic beverages. Such an area cannot exceed 33% of the establishment's permitted seating capacity.

Employee: Any individual who performs services for an employer in return for wages or profit or any individual who volunteers his or her services.

Employer: Any individual, partnership, association, corporation, trust or other organization, including any public or private authority or municipal or other governmental agency, which regularly uses the services of two (2) or more employees.

Private Assembly Room: that area of a hotel, motel, restaurant, bar or function hall which is primarily used for rental by the public for functions, parties or banquets

Restaurant: Any coffee shop, cafeteria, sandwich stand, private and public cafeterias, or other eating establishment which gives or offers food for sale to the public, guests or employees, as well as the kitchens in which said food is prepared on the premises for serving elsewhere, including catering facilities.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or any form.

Smoking Bar: An establishment whose business is primarily devoted to the selling of tobacco products for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such products. An establishment which serves full meals cannot be considered a "Smoking Bar" for the purposes of this regulation. An establishment which serves appetizers and snacks may be considered a "Smoking Bar" for the purposes of this regulation.

Section II – Restaurants

A. Areas where smoking prohibited

No person shall smoke, nor shall any person be permitted to smoke in the City of Boston in any restaurant, as defined in the definition section of this regulation.

B. Election for Coverage by Private Facilities

The owner, manager, operator or other person in charge of a building or facility which is not covered by paragraph A above, may elect to have the provisions of this Section of this regulation apply by so notifying the Board in writing, or by posting signs prohibiting smoking as provided in paragraph C of this section.

C. Posting Notice of Prohibition

Every facility or establishment in which smoking is prohibited by and under the authority of this section shall have conspicuously posted upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

1. No person shall smoke in any place in which a sign conforming to the requirements of paragraph C of this section.
2. No person shall alter or deface a sign posted under authority of paragraph C of this section.

D. Smoking Permitted

Notwithstanding paragraphs A of this section, smoking may be permitted in the following places or circumstances:

1. Hotel and motel conference rooms and private assembly rooms while these places are being used for private functions;
2. Bars, as defined in the definition section of this regulation;
3. The Bar Area of a Restaurant, as defined in the definition section of this regulation, provided that:
   a. the bar area shall not include any common area of the premises to which a non-smoker may need access, including but not limited to waiting areas, restrooms, and access routes thereto;
   b. the perimeter of such area is separated by:
      i. a floor-to-ceiling physical barrier; or,
      ii. is at least six (6) feet from the perimeter of any area primarily dedicated to the service of food;
   c. such area is conspicuously marked with signs that warn patrons of the dangers of environmental tobacco smoke;
   d. such area does not exceed 33% of the establishment's permitted seating capacity, and;
   e. No person under the age of eighteen (18) shall be seated in such area.
4. Smoking bars, provided such establishments prohibit entry to persons under the age of eighteen (18) at all times, and that such establishments conspicuously post signs at all entrances which warn patrons of the dangers of environmental tobacco smoke.
5. The outdoor, or sidewalk seating, portions of a restaurant, provided that such outdoor section is not enclosed except for the one side which adjoins the restaurant.

E. Conflict with Other Laws, Ordinances, or Regulations

1. Nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.
2. Nothing in this regulation shall be deemed to preempt the further limitation of smoking in the City of Boston by any local regulatory body within the limits of its authority and jurisdiction.

F. Violations

1. Any person, business or entity which violates any provision of this Section of this regulation shall be subject to a fine of:
   a. Three hundred dollars ($300) for the first offense;
   b. Five hundred dollars ($500) for the second of two offenses committed within a twelve month period;
   c. One Thousand dollars ($1000) for the third or more of three or more offenses committed within a twelve month period.
2. Each day a person, business or entity operates in violation of any provision of this Section of this regulation shall be deemed a separate offense.
3. No provision, clause or sentence of this paragraph of this Regulation shall be interpreted as prohibiting any City of Boston Department from suspending or revoking licenses or permits issued by and within the jurisdiction of such Departments for repeated violations of this Regulation.

Section III -- Other Provisions

A. Enforcement

1. Authority to enforce this regulation shall be held by the Boston Public Health Commission, its subsidiary programs or its designees.
2. Any violation of this regulation may be enforced in the manner provided in M.G.L. Chapter 111, section 187, by the Boston Public Health Commission, its subsidiary programs or its designees.
3. Any fines collected under this regulation shall be used for the enforcement of these regulations and\or for educational programs on the harmful effects of tobacco products.

B. Non-retaliation

No person or employer shall discharge, refuse to hire, refuse to serve, or in any manner retaliate against any employee, applicant or customer because such employee, applicant or customer takes any action in furtherance of the enforcement of this regulation or exercises any right conferred by this regulation.

C. Waivers

Any owner or manager of a restaurant subject to this regulation may apply to the Executive Director of the Boston Public Health Commission for a waiver of any provision of this regulation for a period not to exceed ninety (90) days.

1. All waivers shall be submitted to the Executive Director, or his designee, on an application form provided by the Boston Public Health Commission along with a $100 non-refundable filing fee.
2. The decision to grant such a waiver shall be in the sole discretion of the Executive Director, based upon his determination that such waiver is in the public interest. In so determining, the Executive Director may take into account, but is not limited to, the following:
   a. the efforts that the restuarant has made toward compliance with the regulation;
   b. whether or not the restaurant will be in compliance with all terms of the regulation within ninety (90) days; and,
   c. whether the granting of the waiver will result in an appreciable danger to the health of the public.
3. No restaurant shall be granted more than one waiver.

D. Severability

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

E. Effective Date

This regulation shall take effect on September 30, 1998.

3. A summary of how the current ordinance is working in regards to restaurants and youth access is enclosed.

Status of the current tobacco ordinance

Youth access to tobacco products

The Health Department's Tobacco Control Program has conducted regular compliance checks in which 15 or 16 year olds attempt to purchase tobacco. 17% of the time, minors have been able to purchase cigarettes. Rates for cigars and chewing tobacco have been higher. Most surrounding towns and cities have stricter penalties than Cambridge. These penalties mirror the state law unlike the Cambridge ordinance which is weaker for tobacco sales over the counter. Almost all convenience stores and gas stations as well as some pharmacies have self service displays where young people can help themselves to tobacco products. The evidence is clear that this often results in tobacco products being stolen by young people and that this easy accessibility encourages the perception that tobacco is not that harmful.

Recommendation:

Stronger penalties for a sale of tobacco to a minor are needed. Restrictions on self service displays and vending machines are recommended. The recommended restrictions on self service displays and vending machines are identical to the Food and Drug Administration's recommendations and the regulations passed by Attorney General Harshbarger.

Secondhand smoke

The most serious area of concern is smoking in restaurants. According to our records, there are 416 restaurants in Cambridge. 193 (46%) currently allow smoking in areas that range from 10% to 100%. 223 (54%) are voluntarily smokefree. Restaurants that allow smoking include pizza and sub shops along with small family restaurants. While secondhand smoke is dangerous for everyone, it is particularly dangerous for children.

Recommendation:

The Public Health Department strongly believes that the best protection for Cambridge residents and workers is 100% smokefree restaurants. After hearing concerns of restaurant owners and two restaurant associations, we are recommending an interim step which will decrease health risks in the majority of restaurants. The proposed amendment will result in approximately 70 restaurants have smoking sections. These restaurants will be allowed to have smoking sections in bar areas or when the establishment is restricted to adults (18+).

CAMBRIDGE RESIDENTS NEED PROTECTION FROM EXPOSURE TO SECONDHAND SMOKE

The city council passed an ordinance in 1995 which created nonsmoking sections in some restaurants. Scientific evidence in the past four years proves that greater protection is needed. The Cambridge Public Health Department is proposing an amendment to the current ordinance.

WHY CURRENT ORDINANCE IS NOT WORKING

- Children are being exposed to secondhand smoke in restaurants. Research has shown that secondhand smoke is particularly harmful for children.
- People with asthma, respiratory problems and allergies are being exposed to secondhand smoke in restaurants. Secondhand smoke can trigger additional health problems.
- General public is concerned about secondhand smoke and wants smokefree options so they don't have to choose between entertainment/dining out and health risks.
- Workers are being exposed to secondhand smoke as part of employment.

THE NEW PROPOSAL

- The proposed ordinance amendment would prohibit smoking in all restaurants without a bar area. The current ordinance allows 100% smoking in restaurants with less than 25 seats and requires only 50% of the seating of other restaurants to be nonsmoking. Smoke doesn't stop at the end of the smoking section.
- The proposed ordinance amendment would limit smoking in restaurants with bar areas to no more than 25% of the restaurant seats. If the bar area is not separate from the rest of the restaurant, the amendment would require a separation of at least 6 feet of space between the two sections.
- The proposed ordinance amendment would permit smoking in nightclubs and some restaurants during certain hours when food is incidental and/or entertainment is offered and the establishment is limited to individuals who are 18 or older.
- While under the proposed ordinance amendment some establishments may still be too smoke-filled for people with asthma, respiratory problems or allergies, the amendment would eliminate or substantially limit children's exposure to secondhand smoke. It would also lessen the exposure of workers to secondhand smoke.

4. A brief report on whether second hand smoke can be measured and monitored with nonsmoking and smoking sections has been included. Additional scientific studies are available if the Council is interested.

The Reality of Smoking and Non-Smoking Sections

The creation of non-smoking sections in restaurants has often been offered as a solution to the problem of environmental tobacco smoke. However, non-smoking sections are not an answer because second-hand smoke travels outside of the smoking sections and throughout the restaurant affecting all areas. In fact, *it has been shown that after one hour of air mixing, there is virtually no difference between the air quality in either section.*

Numerous studies have documented the ineffectiveness of smoking and non-smoking sections. The following highlights some of those studies.

- Olshansky studied smokers and non-smokers in a large hall which contained an air conditioning unit and six electrostatic air cleaners. Carbon Monoxide levels in the air and carboxyhemoglobin levels in the blood of smokers and non-smokers were nearly the same. Olshansky found that that the carbon monoxide produced by the tobacco smoke spread out evenly throughout the hall.
  From: Olshansky, SJ. Is smoker/nonsmoker segregation effective in reducing passive inhalation among nonsmokers? American Journal of Public Health, 1982 Jul; 72 (7) : 737-9.

- Sterling and Mueller compared the levels of carbon monoxide, nicotine, and respirable suspended particles (RSP) in non-smoking areas of a cafeteria with completely smoke-free office areas. Compared to the non-smoking office area, carbon monoxide was twice as high, nicotine was 6 times higher, and RSP concentration was 5 times higher with in the no-smoking section of the cafeteria. The non-smoking section exposure was only reduced by 50% compare to the smoking area.
  From: Sterling TD, Mueller B. Concentrations of nicotine, RSP, CO and CO2 in nonsmoking areas of offices ventilated by air circulated from smoking designated areas. American Ind Hyg Assoc Journal 1988 Sep; 49 (9): 423-6.

- Repace and Lowrey studied the physical separation of smokers and non-smokers within a space. It was found that only peak concentration of tobacco smoke not average concentrations of exposure were affected. Therefore, it does not reduce the risk of adverse health affects when a person is subjected to life time exposure. This is of particular importance to restaurant workers who are continuously subjected to long term exposure..
  From: Repace JL, Lowry AH. An indoor air quality standard for ambient tobacco smoke based on carcinogenic risk. New York State Journal of Medicine 1985 Jul; 381-3.

*The basis of these highlights comes from the Centers for Disease Control's "Clearing the Air: Is Ventilation an Option?."

5. Copies of the current ordinance, a draft of the proposed ordinance and a series of charts that show the difference between the current ordinance and the proposal. Also included is one chart which summarizes how the Public Health Department moved from a proposal of 100% smokefree to the current proposal.

Restaurants- proposal changes - July-Dec

	Current Ordinance	Proposed 7/98 received feedback from two forums	Proposed 9/98 received feedback from working grp	Proposed 10/98 received feedback from working group	Proposed 12/98 received feedback from working group
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking
Restaurant with bar area (same room)	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking in restaurant license to permit smoking -defined area/6ft (25% of total seats)
Restaurant with bar in separate room	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking in restaurant license to permit smoking in bar area (25% total of seats)
Bar	smoking permitted	no smoking	smoking permitted if percentage of alcohol is greater than food	smoking permitted if percentage of alcohol is greater than food	license to permit smoking if percentage of alcohol is greater than food (50% of total seats) *or* establishment is only 18+ (50% of total seats) *or* license to permit smoking during certain hours if 18+ and food is incidental for those hours (50% of total seats)
Nightclubs	smoking permitted	no smoking	smoking permitted during certain hours with variance if 21+ and live entertainment and 200 capacity	smoking permitted during certain hours with variance if 21+ and live entertainment (capacity requirement removed)	license to permit smoking during certain hours if 18+ and live entertainment

Restaurants

	1995 Ordinance	Proposed Ordinance
Restaurants *indoor seating*	Smoking is prohibited except for designated smoking area. Restaurants with fewer than 25 seats are exempt. Smoking area must not comprise more than 50% of seating capacity and should be set up to minimize transfer of smoke to non-smoking areas (using ventilation systems, barriers, etc.) Children under 12 may not be seated in smoking area; from age 12 to 18 may sit in smoking area if accompanied by parent/guardian.	Smoking is prohibited unless restaurant obtains permit to allow smoking from the Cambridge Public Health Department. Establishments that choose to be adult only (ages 18 and older) at all times may designate up to 50% of seating to allow smoking.
Restaurants *outdoor seating*	not regulated	Smoking permitted if outdoor area is not enclosed.
Restaurants *bar area*	Not specifically addressed	Permit to allow smoking if smoking area (25%) is 18+ and bar area is enclosed or defined section with 6 ft barrier
Bars **Dual use** **Restaurants** *in which food is incidental to alcohol*	Exempt	Permit to allow smoking (50%) if establishment is restricted to persons age 18 and older. Permit to allow smoking (50%) during certain hours when food incidental or entertainment and 18+ only Permit to allow smoking (50%)
Nightclubs (Dual use)	Exempt	Permit to allow smoking during time periods in which establishment is restricted to 18 + and certain categories of live entertainment license such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

Function rooms	Smoking permitted if used for private functions.	Same
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense. Common victualer and liquor licenses may be suspended or revoked after 3 or more violations within a 12 month period.	Non criminal disposition – 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense. Permit to allow smoking can be suspended for 4 or more violations in 36 month period

2/22/99

EXAMPLES OF PROPOSED ORDINANCE AMENDMENT

Mary Chung	no bar	restaurant is smokefree
Algiers Coffeehouse(option 1)	no bar	restaurant is smokefree (all ages welcome)
Algiers Coffeehouse (option 2)	no bar	declare establishment limited to 18 and older at all times; 50% smoking area- *section C*
Sail Loft	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree function room is smoking or smokefree depending on renters of the function room
The Field (option 1)	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	during certain hours when pub menu rather than full menu or entertainment, smoking area is increased to 50% of seating as long as seating is limited to 18 and older *(section E-dual use)*
The Field (option 2)	declare establishment limited to 18 and older at all times; 50% smoking area (total seats- bar and restaurant)-*section C*	
John Harvard Brew House	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree during certain hours when pub menu rather than full menu, smoking area is increased to 50% of seating as long as seating is limited to 18+ *(section E-dual use)*
Green Street Grill	bar (25% or less of total seats) - smoking at all times if seats at bar are limited to 18+ *(sectionA)*	restaurant is smokefree except for hours when live entertainment is offered as long as patrons limited to 18+ *(section F-dual use)*
CanTab Lounge	50% smoking (bar and restaurant seats total) as long as smoking section is limited to 18 and older *(section D)*	smoking allowed during hours when live entertainment is offered as long as patrons limited to 18 and older *(section F-dual use)*

1/25/99

Youth Access

	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Permit	**Tobacco sales permit required (summary)**	Same	Dept of Revenue	N/A
Proof of age	**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.**	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.	N/A	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.
Sale to minors	**Prohibited (summary)**	Same	Same	Same
Distribution of free samples	**Distribution of free products, samples or coupons/vouchers for free or reduced-price tobacco products is prohibited.**	Same	N/A	
Packaging of cigarettes	**Sale/distribution of single cigarettes or any product not in its original package is prohibited.**	Sale/distribution of single cigarettes or any product not in its original package is prohibited. Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.	Dept of Revenue	Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.
Self-service displays	**All free-standing self-service displays must be within view of staff at the cash register and no more than 10 feet from a register (summary)**	All self-service displays are prohibited. Exception: displays located in facilities in which persons under 18 are not allowed.	N/A	All self-service displays are prohibited. Exception: displays located in Facilities in which persons under 18 are not allowed.

Signs	MGL must be posted (summary)	Same	Same	N/A
	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Vending machines	Vending machines must be equipped with a lock-out device; must be located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	Sale of tobacco products by vending machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	N/A	**Sale of tobacco products by vending Machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.**
Enforcement - sales permit	Tobacco sales permit may be suspended for 15 days (1 violation), 60 days (2 violations), or revoked (3 violations within 12 months).	Tobacco sales permit may be suspended after 3 violations within 24 months.		
Enforcement - other penalties	Over the counter: 1st offense ($50) 2nd ($100) 3rd/subsequent in 1 year ($300). Vending machine: 1st offense ($100) 2nd offense ($200) 3rd offense ($300) Criminal penalty - fine not exceeding $25 per offense. Non-criminal disposition - $25 per violation.	Sales to minors: 1st offense ($100) 2nd ($200) 3rd/subsequent in 2 years ($300). Other violations may be subject to a fine of $25 per day.	MGL (criminal offense) 1st offense ($100) 2nd offense ($200) 3rd offense ($300)	**1st offense – warning 2nd offense - $250 3rd offense - $1,500 4th offense - $5,000 5th offense - $10,000**

Public Places

	1995 Ordinance	Proposed Ordinance
Public Places *including but not limited to: licensed childcare facilities; educational facilities; public restrooms; waiting rooms; public elevators; common rooms in publicly-assisted housing; laundromats; libraries; museums; retail food establishments; indoor sports arenas; theaters and concert halls; halls and rooms used for public meetings; public areas of bank and ATM lobbies*	Smoking is prohibited in any indoor public place except for designated smoking areas (see below for requirements). Areas which cannot be designated as a smoking area include hallways, entranceways, stairwells, waiting areas, restrooms, elevators and other areas as declared by federal, state or local agencies. Smoking area must be properly ventilated and posted.	Same Smoking areas may be designated in an area not open to the public provided that area is enclosed and properly ventilated, that a comparable non-smoking area is provided and that smoking is not prohibited by state law, fire regulations or other sections of this regulation.
Retail stores *including stores which sell personal services*	Smoking is prohibited; smoking section may be designated in an area not open to the public	Same
Health care facilities	Smoking is prohibited; a smoking area may be designated in hospitals, clinics, nursing homes, long-term facilities and rooms where support groups meet if approved by Commissioner or designee.	Smoking is prohibited; a smoking area may be designated where psychiatric support groups meet if approved by Commissioner or designee. Smoking may be permitted in private rooms of nursing homes or long-term facilities if requested by patients.
Taxis, limousine, livery services	Smoking prohibited whenever passengers are being transported.	Smoking prohibited
Malls	Smoking prohibited.	Same
Public parks	Smoking prohibited, includes school grounds & "totlots"	Same
Schools, municipal buildings	Smoking prohibited.	Same

Inns, motels and hotels	Smoking prohibited in lobbies, stairwells, halls, entranceways and restrooms. Smoking allowed in meeting rooms when used for private functions if room is properly ventilated. Smoking allowed in rooms rented to guests.	Same (includes bed and breakfasts and lodging homes) Same Smoking allowed in rooms rented to guests that are designated as smoking rooms.
Variance	May apply to the Public Health Commissioner or designee to waive a provision.	May apply to the Public Health Commissioner or designee to waive a provision.
Exceptions	1. private residences 2. dormitories 3. Hotel rooms designated as smoking 4. Hotel conference/meeting rooms 5. Private nursing home rooms when requested 6. tobacco stores/smokeshops 7. performers on stage 8. religious ceremonies if smoking is part of the ritual. 9. private clubs, except when used for events open to the public 10. charity beano games 11. Psychiatric support groups with variance from Commissioner 12. places of incarceration/detention 13. employee smoking lounges with conditions 14. bowling alleys	1. except when used as a licensed childcare or healthcare facility 2. if students request smoking room 3. same 4. same 5. same 6. same 7. same 8.same 9. same 10. same 11. same 12. same 13. transferred from worksite section 14. smokefree
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense.	Non-criminal - 1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

Workplace

	1995 Ordinance	Proposed Ordinance
Prohibition of smoking	Smoking is prohibited in any room normally frequented during the course of employment including work areas, employee lounges/restrooms, conference rooms, hallways.	Smoking in any workplace is prohibited except for designated smoking areas.
Designated smoking area	Employer may provide smoking lounge provided that employees need not enter for any other purpose; that lounge is sealed, vented to the outside and does not re-circulate smoke throughout work areas; and that a smoke-free lounge is provided.	A smoking area may be designated provided that the area is enclosed, smoke is vented to the exterior of the building, and employees need not enter the smoking area. A non-smoking area of comparable size and with comparable amenities must be provided.
Creation of smoking policy		A smoking policy shall be available for viewing.
Posting of areas		Areas must be conspicuously marked
Enforcement	Non-criminal disposition: $25 per violation. Criminal: not exceeding $50 per violation.	1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

1/25/99

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 5A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

Minor: Any individual who is under the age of eighteen (18).
Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

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

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in 8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke

into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.

Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

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

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:
Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner of Health or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:
(1) The efforts made by the entity to comply with the ordinances;
(2) Whether granting the waiver will result in an appreciable danger to the public health;
(3) Whether enforcement of the ordinance will cause manifest injustice to the entity.

8.28.100. Violations and Penalties:
A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section I. of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*
Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code and Cambridge municipal code.
License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within

the City of Cambridge.

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

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If the ownership of a restaurant with a *permit to allow smoking* is transferred to a new person, the right to a *permit to allow smoking* is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7)

days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 Implementation:

This revised ordinance will be effective June 1, 1999.

ORDINANCE NO. 1165

Final publication number 2683. First publication in the Chronicle on May 25, 1995.

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:

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 60% 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 U.S. 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 require 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 Violation - Penalty

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.

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. (Ord. 1165 (part), 1995)

8.28.020 Definitions

"Bar, lounge or club" means a restaurant, excluding private clubs, which is primarily dedicated to the serving of alcoholic beverages and in which less than fifty percent of net revenue comes from food sales.

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

"Common victualer" means 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" means 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" means any person, including the City of Cambridge or any agency or department thereof, regularly uses the services of two or more employees.

"Enclosed area" means a space bounded by walls and under a roof.

"Indoor sports arena" means 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" means the Cambridge License Commission, as established by St. 1922, c. 95.

"Lounge or bar area" means 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" means any enclosed public walkway or hall area which serves to connect retail stores or offices.

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

"Non-smoking area" means all areas within a public place where smoking is prohibited.

"Occupancy number" means 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" means and includes, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

"Private club" means 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" means 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" means 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 four or ten p.m.

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

"Self-service display" means 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" means 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" means 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 most 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" means cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or tobacco in any of its forms.

"Workplace" means 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

A. 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:

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

2. 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 ares sold and will be renewed by July 1 of each successive year. The permit or a copy must be prominently posted at the each point of sale, within the business location.

B. 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.

C. 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.

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

E. 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. (Ord. 1165 (part), 1995)

8.28.040 Prohibition of Smoking In The Workplace

A. 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.

B. 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/her 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. (Ord. 1165 (part), 1995)

8.28.050 Restrictions on Smoking in Public Places

A. 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 Massachussets 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.

B. 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.

C. 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.

D. 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."

E. Exceptions. Notwithstanding any other provision of this Chapter, the following public places are not subject to the restrictions of section 8.28.040 and 8.28.050:

1. Retail stores where the primary business is the sale of tobacco products;

2. Private residences and University dormitories;

3. Bed and Breakfast, hotel, and motel rooms rented to guests;

4. 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;

5. Performers upon the stage, provided that the smoking is part of a theatrical production.

6. Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

7. 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

8. 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.

9. The Middlesex County Jail/House of Corrections or places of incarceration/detention.

10. 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 is 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 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

area of the restaurant must be displayed near the entrance.

8.28.070 Implementation

A. 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:

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

2. 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;

3. 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;

4. 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;

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

B. The Commissioner may promulgate reasonable rules and regulations for the implementation of this Chapter. (Ord. 1165 (part), 1995)

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

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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 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.

C. Injunctive Relief. The Commissioner may apply to the Superior Court for injunctive relief from violations of this Chapter. (Ord. 1165 (part), 1995)

8.28.090 Violation - Penalty

A. Criminal Penalty. Any person who knowingly violates any provision of this

chapter, or who smokes in an area in which a "Smoking Prohibited by Law' notice is conspiciously posted as required by Section 8.28.070 of this chapter, shall be liable to a fine not exceeding fifty dollars for each offense.

B. Noncriminal Disposition. Any person who knowingly violates any provision of this chapter, or who smokes in an area in which a "Smoking Prohibited by Law" notice is conspiciously posted as required by Section 8.28.070 of this chapter, may be penalized by a noncriminal disposition as provided in G.L. c. 40, § 21D. For purposes of this section, the following officials shall be enforcing persons: Police Officers, Dog Officers, Inspectional Services Inspectors and Parking Control Officers. The penalty for each violation will be twenty-five dollars. (Ord. 1084 § 2, 1989)

CHAPTER 8.29

Regulation of The Sale of Tobacco Products through Vending Machines

8.29.010 Declaration of Legislative Findings.
8.29.020 Definitions.
8.29.030 Sales of Tobacco Products through Vending Machines.
8.29.040 Evaluation of Effectiveness.
8.29.050 Violation - Penalty.

8.29.010 Declaration of Legislative Findings.

The city council finds that the vast majority of smokers begin smoking in their teens or preteens. The health hazards posed by cigarettes and other tobacco products are well documented and the sale of tobacco in any form to persons under the age of eighteen is prohibited in this Commonwealth. However, cigarette vending machines in public places have provided unsupervised minors with easy access to cigarettes, in contravention of the policy in this Commonwealth. Accordingly, the City Council finds that the ability of unsupervised minors to obtain cigarettes and other tobacco products in violation of the law will be significantly reduced by regulating vending machines

which dispense such products. (Ord. 1154 (part), 1993)

8.29.020 Definitions

A. "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.

B. "Public place" means any area to which the public is invited or in which the public is permitted.

C. "Sales" means the giving , selling, delivering, dispensing, issuing, offering to give, sell, deliver, dispense or issue, or cause or hiring any person to give, sell, deliver, dispense, issue or offer to give, sell deliver, dispense or issue.

D. "Tobacco products" means any substance which contains tobacco, including, but not limited to, cigarettes, cigars, smoking tobacco and smokeless tobacco.

E. "Vending machine" means any self-service device offered for public use, which, upon insertion of a coin, coins, token, paper currency, or by other means, dispenses tobacco products. (Ord. 1154 (part), 1993)

8.29.030 Sales of Tobacco Products through Vending Machines

All sales of tobacco products by vending machines within the City shall be prohibited unless:

A. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter; and

B. The vending machine must not be located in a coatroom, restroom, unmonitored hallway, outer waiting area, or similar unmonitored area and must be inaccessible to the public when the establishment is closed; and

C. The vending machine is equipped with a lock-out device approved by the

Health Commissioner. The device shall lock out sales from vending machines unless any employee releases the locking mechanism. The release mechanism must not allow continuous operation of the vending machine and must not be accessible to consumers. Vending machines shall be posted with a sign stating that the machine is equipped with a lock-out device and identifying the person(s) to contact to purchase tobacco products from the machine; and

D. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

E. Or, unless the use of the premises is restricted to persons over the age of eighteen. (Ord. 1154 (part), 1993)

8.29.040 Evaluation of Effectiveness

A. The City Manager, with the License Commission, the Commissioner of Health and Hospitals and the Substance Abuse Task Force shall devise a program to evaluate the effectiveness of this chapter, with regard to its goal of reducing the access of minors to tobacco products, and shall report back to the City Council as to its effectiveness within one year after the adoption of the ordinance codified in this chapter, such report to include, among other things, the number of cigarette vending machines in the City.

B. During the one-year evaluation, there shall be an aggressive community education campaign geared to minors and those who sell cigarettes. (Ord. 1154 (part), 1993)

8.29.050 Violation - Penalty

A. Any person who knowingly violates any provision of this chapter may be penalized by a noncriminal disposition as provided in G.L. c.40 § 21D. For purposes of

this section, the following officials shall be enforcing persons: police officers, staff inspectors from the Cambridge License Commission and inspectors from the Inspectional Service Department. Health + Hospitals ?

B. The penalty for the first violation shall be one hundred dollars; for the second violation, two hundred dollars; and for all subsequent violations, three hundred dollars. (Ord. 1154 (part), 1993

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

SCRATCH OUT SMOKING

RED-LINED FOR COUNCIL

It's time we made smoking history

The Five City Tobacco Control Collaborative
A project of the health departments of:
Cambridge ✦ Chelsea ✦ Everett ✦ Revere ✦ Somerville

THREE PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 7A)

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 7A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

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

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

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

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

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

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

Private Club: A nonprofit entity with a paid membership.

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

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

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

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

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

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

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

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

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such

hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking*.

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 <u>Implementation:</u>

This revised ordinance will be effective June 1, 1999.

Restaurants

	1995 Ordinance	Proposed Ordinance
Restaurants *indoor seating*	Smoking is prohibited except for designated smoking area. Restaurants with fewer than 25 seats are exempt. Smoking area must not comprise more than 50% of seating capacity and should be set up to minimize transfer of smoke to non-smoking areas (using ventilation systems, barriers, etc.) Children under 12 may not be seated in smoking area; from age 12 to 18 may sit in smoking area if accompanied by parent/guardian.	Smoking is prohibited unless restaurant obtains permit to allow smoking from the Cambridge Public Health Department. Establishments that choose to be adult only (ages 18 and older) at all times may designate up to 50% of seating to allow smoking.
Restaurants *outdoor seating*	not regulated	Smoking permitted if outdoor area is not enclosed.
Restaurants *bar area*	Not specifically addressed	Permit to allow smoking if smoking area (25%) is 18+ and bar area is enclosed or defined section with 6 ft barrier
Bars **Dual use** **Restaurants** *in which food is incidental to alcohol*	Exempt	Permit to allow smoking (50%) if establishment is restricted to persons age 18 and older. Permit to allow smoking (50%) during certain hours when food incidental or entertainment and 18+ only Permit to allow smoking (50%)
Nightclubs (Dual use)	Exempt	Permit to allow smoking during time periods in which establishment is restricted to 18 + and certain categories of live entertainment license such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

Function rooms	Smoking permitted if used for private functions.	Same
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Common victualer and liquor licenses may be suspended or revoked after 3 or more violations within a 12 month period. Criminal penalty - fine not exceeding $50 per offense.	Non criminal disposition – 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense. Permit to allow smoking can be suspended for 4 or more violations in 36 month period Criminal penalty - 1st offense - $25 2nd offense - $50 3rd offense - $100 Each day is a separate offense.

5/3/99

COMPARISON OF PROPOSED CAMBRIDGE ORDINANCE TO LOCAL COMMUNITIES

Restaurants

	Cambridge (current)	Cambridge (proposed)	Boston	Brookline	Somerville
Restaurant with 25 or less seats	smoking 100%	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with more than 25 seats	50% nonsmoking section	no smoking	no smoking	no smoking	no smoking effective 1/2000
Restaurant with bar area (same room)	50% nonsmoking section	no smoking in restaurant permit to allow smoking at bar/defined area with 6 feet barrier	no smoking in restaurant smoking permitted at bar/ 6 ft barrier	no smoking	no smoking in restaurant smoking permitted at bar/ 6 ft barrier with variance
Restaurant with bar in separate room	50% nonsmoking section	no smoking in restaurant permit to allow smoking in bar area	no smoking in restaurant smoking permitted at bar	no smoking in restaurant smoking permitted at bar with variance and ventilation	no smoking in restaurant smoking permitted at bar with variance
Bar	smoking permitted	permit to allow smoking if percentage of alcohol is greater than food *or* establishment is only 18 +	smoking permitted	no smoking	smoking permitted
Nightclubs	smoking permitted	permit to allow smoking during certain hours if 18+ and live entertainment	smoking permitted	no smoking	smoking permitted during certain hours if apply for a variance

1/25/99

EXAMPLES OF PROPOSED ORDINANCE AMENDMENT

Mary Chung	no bar	restaurant is smokefree
Algiers Coffeehouse(option 1)	no bar	restaurant is smokefree (all ages welcome)
Algiers Coffeehouse (option 2)	no bar	declare establishment limited to 18 and older at all times; 50% smoking area- *section C*
Sail Loft	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree function room is smoking or smokefree depending on renters of the function room
The Field (option 1)	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	during certain hours when pub menu rather than full menu or entertainment, smoking area is increased to 50% of seating as long as seating is limited to 18 and older *(section E-dual use)*
The Field (option 2)	declare establishment limited to 18 and older at all times; 50% smoking area (total seats- bar and restaurant)-*section C*	
John Harvard Brew House	bar area (25% or less of total seats) - smoking at all times if seats in bar area (bar and tables in defined bar area) are limited to 18 and older *(section B)*	restaurant is smokefree during certain hours when pub menu rather than full menu, smoking area is increased to 50% of seating as long as seating is limited to 18+ *(section E-dual use)*
Green Street Grill	bar (25% or less of total seats) - smoking at all times if seats at bar are limited to 18+ *(sectionA)*	restaurant is smokefree except for hours when live entertainment is offered as long as patrons limited to 18+ *(section F-dual use)*
CanTab Lounge	50% smoking (bar and restaurant seats total) as long as smoking section is limited to 18 and older *(section D)*	smoking allowed during hours when live entertainment is offered as long as patrons limited to 18 and older *(section F-dual use)*

1/25/99

Workplace

	1995 Ordinance	Proposed Ordinance
Prohibition of smoking	Smoking is prohibited in any room normally frequented during the course of employment including work areas, employee lounges/restrooms, conference rooms, hallways.	Smoking in any workplace is prohibited except for designated smoking areas.
Designated smoking area	Employer may provide smoking lounge provided that employees need not enter for any other purpose; that lounge is sealed, vented to the outside and does not re-circulate smoke throughout work areas; and that a smoke-free lounge is provided.	A smoking area may be designated provided that the area is enclosed, smoke is vented to the exterior of the building, and employees need not enter the smoking area. A non-smoking area of comparable size and with comparable amenities must be provided.
Creation of smoking policy		A smoking policy shall be available for viewing.
Posting of areas		Areas must be conspicuously marked
Enforcement	Non-criminal disposition: $25 per violation. Criminal: not exceeding $50 per violation.	1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

1/25/99

Public Places

	1995 Ordinance	Proposed Ordinance
Public Places *including but not limited to: licensed childcare facilities; educational facilities; public restrooms; waiting rooms; public elevators; common rooms in publicly-assisted housing; laundromats; libraries; museums; retail food establishments; indoor sports arenas; theaters and concert halls; halls and rooms used for public meetings; public areas of bank and ATM lobbies*	Smoking is prohibited in any indoor public place except for designated smoking areas (see below for requirements). Areas which cannot be designated as a smoking area include hallways, entranceways, stairwells, waiting areas, restrooms, elevators and other areas as declared by federal, state or local agencies. Smoking area must be properly ventilated and posted.	Same Smoking areas may be designated in an area not open to the public provided that area is enclosed and properly ventilated, that a comparable non-smoking area is provided and that smoking is not prohibited by state law, fire regulations or other sections of this regulation.
Retail stores *including stores which sell personal services*	Smoking is prohibited; smoking section may be designated in an area not open to the public	Same
Health care facilities	Smoking is prohibited; a smoking area may be designated in hospitals, clinics, nursing homes, long-term facilities and rooms where support groups meet if approved by Commissioner or designee.	Smoking is prohibited; a smoking area may be designated where psychiatric support groups meet if approved by Commissioner or designee. Smoking may be permitted in private rooms of nursing homes or long-term facilities if requested by patients.
Taxis, limousine, livery services	Smoking prohibited whenever passengers are being transported.	Smoking prohibited
Malls	Smoking prohibited.	Same
Public parks	Smoking prohibited, includes school grounds & "totlots"	Same
Schools, municipal buildings	Smoking prohibited.	Same

Inns, motels and hotels	Smoking prohibited in lobbies, stairwells, halls, entranceways and restrooms. Smoking allowed in meeting rooms when used for private functions if room is properly ventilated. Smoking allowed in rooms rented to guests.	Same (includes bed and breakfasts and lodging homes) Same Smoking allowed in rooms rented to guests that are designated as smoking rooms.
Variance	May apply to the Public Health Commissioner or designee to waive a provision.	May apply to the Public Health Commissioner or designee to waive a provision.
Exceptions	1. private residences 2. dormitories 3. Hotel rooms designated as smoking 4. Hotel conference/meeting rooms 5. Private nursing home rooms when requested 6. tobacco stores/smokeshops 7. performers on stage 8. religious ceremonies if smoking is part of the ritual. 9. private clubs, except when used for events open to the public 10. charity beano games 11. Psychiatric support groups with variance from Commissioner 12. places of incarceration/detention 13. employee smoking lounges with conditions 14. bowling alleys	1. except when used as a licensed childcare or healthcare facility 2. if students request smoking room 3. same 4. same 5. same 6. same 7. same 8.same 9. same 10. same 11. same 12. same 13. transferred from worksite section 14. smokefree
Enforcement	Non-criminal disposition - $25 per violation; each day is a separate offense. Criminal penalty - fine not exceeding $50 per offense.	Non-criminal - 1st offense - $25 2nd offense - $50 3rd/subsequent offense - $100 Each day is a separate offense.

Youth Access

	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Permit	Tobacco sales permit required (summary)	Same	Dept of Revenue	N/A
Proof of age	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.	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.	N/A	Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than eighteen (18) years of age. No such verification is required for any person over the age of 26.
Sale to minors	Prohibited (summary)	Same	Same	Same
Distribution of free samples	Distribution of free products, samples or coupons/vouchers for free or reduced-price tobacco products is prohibited.	Same	N/A	
Packaging of cigarettes	Sale/distribution of single cigarettes or any product not in its original package is prohibited.	Sale/distribution of single cigarettes or any product not in its original package is prohibited. Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.	Dept of Revenue	Sale /distribution of any cigarette package with fewer than 20 cigarettes is prohibited.
Self-service displays	All free-standing self-service displays must be within view of staff at the cash register and no more than 10 feet from a register (summary)	All self-service displays are prohibited. Exception: displays located in facilities in which persons under 18 are not allowed.	N/A	All self-service displays are prohibited. Exception: displays located in Facilities in which persons under 18 are not allowed.

Signs	MGL must be posted (summary)	Same	Same	N/A
	1995 Ordinance	Proposed Ordinance	State Laws	Federal Rules
Vending machines	Vending machines must be equipped with a lock-out device; must be located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	Sale of tobacco products by vending machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.	N/A	Sale of tobacco products by vending Machine is prohibited unless: the machine is located in facilities in which no minors are allowed; the machine is located in the immediate vicinity, view and control of an employee; must be posted with a sign stating it is illegal for minors to purchase cigarettes.
Enforcement - sales permit	Tobacco sales permit may be suspended for 15 days (1 violation), 60 days (2 violations), or revoked (3 violations within 12 months).	Tobacco sales permit may be suspended after 3 violations within 24 months.		
Enforcement - other penalties	Over the counter: 1st offense ($50) 2nd ($100) 3rd/subsequent in 1 year ($300). Vending machine: 1st offense ($100) 2nd offense ($200) 3rd offense ($300) Criminal penalty - fine not exceeding $25 per offense. Non-criminal disposition - $25 per violation.	Sales to minors: 1st offense ($100) 2nd ($200) 3rd/subsequent in 2 years ($300). Other violations may be subject to a fine of $25 per day.	MGL (criminal offense) 1st offense ($100) 2nd offense ($200) 3rd offense ($300)	1st offense – warning 2nd offense - $250 3rd offense - $1,500 4th offense - $5,000 5th offense - $10,000

Secondhand Smoke: The Facts

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

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.
(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.
(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke in bars that allow smoking are between 440-450% higher than in residential settings.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.
(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.
(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

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

Tobacco Control Ordinance Process To Date:
(Included are meetings with the Cambridge business community, elected officials, and some community groups. Additional meetings occurred with Cambridge city departments and the public health community.)

March 1998:

March 10, 1998:	*Tab prints "Smoke Wars; City prepares to re-ignite smoking ban for restaurants, bars"*
March 11, 1998:	**CHA Public Health Sub-Committee meeting to discuss changing smoking ordinance**
March 12, 1998:	*Chronicle prints article "City Mulls Tougher Smoking Laws"*

May 1998:

May 1999:	Cambridge Public Health Department Report "The Facts on ETS" sent to the City Council

July 1998:

Week of July 6:	Mailing sent to all restaurants about restaurant forum
July 9, 1998:	**Meeting with Cambridge Licensee Advisory Board**
July 16, 1998:	**9:00 a.m. and 7:00 p.m. Two Restaurant Forums** (attended by 36 people, 10 restaurants, & 2 hotels)
July 16, 1998:	*Chronicle prints "Proposed smoke ban ignites debate"*
July 21, 1998:	Howard Koh, Commissioner of the MA Department of Public Health, sends "A Cloud Over Our Cities and Towns: What Policy Makers Need to Know about Secondhand Smoke"
Week of July 27:	Mailing sent to all restaurants and retailers about August 5 C.P.H.C. public hearing
July 27, 1998:	Tobacco Control Update , Number 1 is sent to concerned individuals
July 28, 1998:	*Tab prints ad for 8/5 public hearing*
July 30, 1998:	*Chronicle prints ad for 8/5 hearing*

July 30, 1998: *Chronicle prints "Smoking Ban Compromise?"*

August 1998:

August 98 - April 99: Postcard Survey of Public Opinion regarding Smoking in Restaurants

August 5th: **5:30 p.m. Cambridge Public Health Commission Public Hearing at Kennedy Elementary School** (over 70 in attendance)

August 7, 1998: Tobacco Control Update, Number 2 sent to concerned individuals

August 9, 1999: *Globe prints "No-Smoke policy from 25% to 100%"*

September 1998:

September 8, 1998: **Presentation to Harvard Square Business Association**

September 16, 1998: **Initial Meeting of Restaurant Working Group**

October 1998:

October 13, 1998: **Presentation to City Council Health and Hospital Committee**

October 15, 1998: *Chronicle prints story "Health Leaders Eye Strict Smoke Ban"*

October 15, 1998: *Chronicle prints story "The Separation of Smoke and State"*

October 18, 1998: *Globe prints "Smoking Ban Outlined to Council"*

November 1998:

November 10, 1998: Tobacco Control Update, Number 3 sent to concerned individuals

November 17, 1998: *Chronicle full page ad Letter from ACS and health care providers "The time is right for clean indoor air in Cambridge"*

Week of November 23: Mailing to retailers about retailer forum

December 1998:

December - March:	Multi-lingual Opinion Survey in Health Centers
December 1, 1998:	*Tab prints notification of 12/3 Retailer Forum*
December 3, 1998:	**3:00 p.m. Tobacco Retailer Forum** (2 attended)
December 8, 1998:	Individual Visit to Sail Loft Individual Visit to Courtside Individual Visit to Green Street Grill Individual Visit to Middle East
December 10, 1999:	Individual Visit to Harvard Brew House Individual Visit to House of Blues
December 13, 1999:	Individual Visit to Frank's Steakhouse
December 17,1998:	**Restaurant Working Group Meeting**

(In December also visited 12 additional restaurants but did not speak with owner or manager)

January 1999:

January 13, 1999:	Individual Visit with Algier's Coffeehouse
January 19, 1999:	Meeting with Bruce Potter, MRA and John Clifford
January 20, 1999:	Individual Visit to Charles Hotel
January 21, 1999:	**Restaurant Working Group Meeting**
January 25, 1999:	Individual Visit with Lanes & Games Bowling Alley
January 25, 1999:	Individual Visit to Sheraton Commander Hotel

February 1999:

February 1999:	Clarke University Survey of 2,000 Registered Voters in Cambridge
February 1, 1999:	Individual Visit with Royal Sonesta Hotel
February 2, 1999:	Individual Visit with University Park Hotel

February 2, 1999:	Individual Visit with Cambridge Marriott Hotel
February 3, 1999:	**Presentation to Cambridge Licensee Advisory Board**
February 4, 1999:	*Cambridge Chronicle prints notification of 2/23 Retailer Forum*
Week of February 8:	Mailing to all restaurants and retailers regarding forums
February 8, 1999:	Individual Visit to Hyatt Regency Hotel
February 10, 1999:	**Presentation to CHA Cambridge Public Health Sub-Committee**
February 18, 1999:	*Cambridge Chronicle prints notification of Restaurant Forum*
February 19, 1999:	Individual Visits to North Cambridge Establishments regarding upcoming forums: Cambridge Common, Fraser's, Forest Café, Temple Bar, Harvard House of Pizza, Changso Restaurant, Cottonwood Café, Christopher's, Kaya Restaurant, Porter Square Café, Newtowne Grille, Andy's Diner, Porterhouse Café, Maharaja Restaurant, Sun's Café, Corner Restaurant, Garbun Chinese Restaurant, Jose's Mexican Food
February 23, 1999:	**3:00 p.m. Tobacco Retailer Forum** (4 attended)
February 25, 1999:	Forums canceled because of snow. However, 10 people did attend and were given information

March 1999:

Week of March 1:	Mailing sent to all restaurants about rescheduled forum
March 2, 1999:	Meeting with City Solicitor
March 11, 1999:	**3:00 p.m. Restaurant Forum** (19 attended)
March 18, 1999:	Individual Visit with Café Pomplano
March 25, 1999:	Individual Visit with Casa Portugal

April 1999:

April 6, 1999:	Meeting with Councilor Born

April 7, 1999:	Meeting with Councilor Davis
April 7, 1999:	Meeting with Mayor Duehay
April 9, 1999:	Tobacco Control Update, Number 4 sent to concerned individuals
April 15, 1999:	Individual Visit to 8 Portuguese speaking restaurant owners or managers with Portuguese speaker: Individual Visit to Firehouse Grill Individual Visit to Portugalia Individual Visit to Sunset Grill Individual Visit to Middle West Grill Individual Visit to Casal Bakery Individual Visit to Corner Delight Individual Visit to Figueirense Restaurant Individual Visit to Atasca
April 20, 1999:	Meeting with Councilor Reeves
April 20, 1999:	Meeting with Councilor Triantafillou
April 20, 1999:	Meeting with Councilor Russell
April 20, 1999:	Meeting with Deputy City Manager
April 20, 1999:	Submitted Response to City Council Order
April 21, 1999:	**Presentation to CHA Joint Board of Health**
April 21, 1999:	**Presentation to CHA Board of Trustees**
Week of April 26:	Mailing to 17 restaurants where food is incidental to alcohol
April 26, 1999:	City Council to refer to both Health & Hospital and Ordinance Committees
April 28, 1999:	Meeting with Councilor Galluccio
April 29, 1999:	*Chronicle prints article "Smoking ban compromise proposed"*
April 30, 1999:	Meeting with Councilor Toomey

May 1999:

May 3, 1999:	Meeting with Councilor Sullivan
May 4, 1999:	*Information on proposed changes and Health and Hospital meeting included in news reports on WBUR/NPR*
May 4, 1999:	**Cambridge City Council Health And Hospital Committee Meeting**
May 6, 1999	Mailing to 17 restaurants in which food is incidental to alcohol
May 12, 1999	**Forum: Smoking in Restaurants in which Food is Incidental to Alcohol** (6 restaurants attended)
May 19, 1999	**Ordinance Committee Hearing**

Key:

Bold: Meetings or presentations to groups or organizations
Italic: Information appeared in one of the newspapers that serve Cambridge
Underline: Mass mailings to restaurants and retailers regarding proposed changes

18 group meetings or public presentations
55 individual visits to restaurants
7 mass mailings to restaurants and/or retailers regarding proposed changes
16 media mentions of proposed changes
3 public opinion surveys

Cambridge Public Health Department
Cambridge Health Alliance

1493 Cambridge Street • Cambridge, MA 02139
617.498.1480 • Fax 617.498.1514

Memorandum

To: Cambridge City Council

From: Cambridge Public Health Department

Date: May 19, 1999

Re: Public Opinion Surveys

The Cambridge Public Health Department has conducted two informal public opinion surveys concerning the issue of smoking in restaurants in Cambridge.

A multilingual survey was distributed through the Community Health Centers in Cambridge during the months of December 1998 through March 1999. Of the total responses of Cambridge residents, 77% wanted all restaurants in Cambridge to be 100% smokefree.

In addition, a postcard survey of public opinion was conducted from August 1998 through April 1999. These postcards were distributed at events such as Riverfest. Of the total number of responses from Cambridge residents, 91% wanted restaurants in Cambridge to be smokefree.

A list from each survey containing the names and addresses of each Cambridge resident that responded in support of smokefree restaurants is enclosed. They are titled respectively multilingual and postcard-Cambridge. Also enclosed is a copy of each actual survey form.

Yes or No
For Smokefree Restaurants
What do you think?

___ Yes, I want all restaurants in Cambridge to be 100% smokefree.

___ No, I do not want all restaurants in Cambridge to be 100% smokefree.

____ I work in Cambridge.

Name:_____

Street:_____

City:_____

Zipcode:_____

Comments:_____

Sí o No
Está de acuerdo en que no se permita fumar en los restaurantes...¿Qué Opina Usted?

_____Sí. Yo quisiera que no se permitiera fumar en ninguna sección de cualquier restaurante de Cambridge.

_____No. Yo no quisiera que no se dejara fumar en ninguna sección de cualquier restaurante de Cambridge.

_____Yo trabajo en Cambridge.

Nombre:_____

Ciudad:_____

Código Postal:_____

Comentarios:_____

SIM OU NÃO
A RESTAURANTES
ONDE É PROIBIDO FUMAR
O QUE VOCÊ ACHA?

RESTAURANTES ONDE É PROIBIDO FUMAR

_____ SIM, QUERO QUE SEJA PROIBIDO FUMAR EM TODOS OS RESTAURANTES EM CAMBRIDGE.

_____ NÃO, NÃO QUERO QUE SEJA PROIBIDO FUMAR EM TODOS OS RESTAURANTES EM CAMBRIDGE.

_____ EU TRABALHO EM CAMBRIDGE.

NOME_____

RUA_____

CIDADE_____

ZIP_____

COMENTÁRIOS_____

WI OU NON POU
MOUN PA FIMEN NAN RESTORAN
KI SA OU PANSE?

POU MOUN PA FIMEN NAN RESTORAN

__Wi, mwen vle pou moun pa fimen nan pyès restoran nan Cambridge.

__Non, mwen pa vle moun fimen nan pyès restoran nan Cambridge.

__ Mwen travay nan Cambridge.

Non_____

Ri _____

Vil _____

Kòd postal _____

Kòmantè _____

First Name	Last Name	Street Number	Street	City	State	Zip
James	Lahens	143	Corcoran	Cambridge	MA	02138
Heather	Raner	201A	Holden Green	Cambridge	MA	02138
Amatul	Mahmud	116	Corcoran Park	Cambridge	MA	02138
William	Cobham	131	Fayerweather S	Cambridge	MA	02138
Dylon	Gray	201A	Holden Green	Cambridge	MA	02138
Elizabeth	Truslow	9	Buckingham St	Cambridge	MA	02138
Felicity	Turner	16	Granville Rd	Cambridge	MA	02138
Shiela	Dillon	245	Garden St	Cambridge	MA	02138
Richard	Homonoff	106	Fayerweather S	Cambridge	MA	02138
Vmayun	Cable	20	Crescent St	Cambridge	MA	02138
Polly	Steele	57	Standish St	Cambridge	MA	02138
Mary	DeLong	1151	Mass Ave	Cambridge	MA	02138
Layla	Cable	20	Crescent	Cambridge	MA	02138
Phoebe	Potts	54	Essex	Cambridge	MA	02139
Halima	Tanors	3	Howard St	Cambridge	MA	02139
Kaki	Rouner	3	Putman Garden	Cambridge	MA	02139
Roger	Youyoute	79	JFK St	Cambridge	MA	02139
Errol	Phillips	55	Jay St	Cambridge	MA	02139
Joy	Walker	7	Putnam Garden	Cambridge	MA	02139
Marc	McDaniels	241	Washington St	Cambridge	MA	02139
Michael	Edgar	72 1/2	Inman St	Cambridge	MA	02139
Marie	Lapaix	203	Elm St	Cambridge	MA	02139
Claudia	Berardini	203	Elm St	Cambridge	MA	02139
Cherie	Little	292	Western Ave	Cambridge	MA	02139
Carlos	Luozes	23	Andrew St	Cambridge	MA	02139
Cheryl	Nelson	161	Washington St	Cambridge	MA	02139
Nadege	Richard	205	Western Ave	Cambridge	MA	02139
Kathy	MacGregor	72	Elm St	Cambridge	MA	02139
Shelley	Rieman	201	Franklin St	Cambridge	MA	02139
Yauich	Laurothe	205	Western Ave	Cambridge	MA	02139
Magalye	Belizaire	180	Windsor St	Cambridge	MA	02139
Demetria	Battle	375	Prospect St	Cambridge	MA	02139
Janice	Goodman	60	Bishop Allen Dr	Cambridge	MA	02139
Janis	Navikas	269	Harvard St	Cambridge	MA	02139
Anthony	Friend	812	Memorial Dr	Cambridge	MA	02139
Louise	Monahan		Cambridge St	Cambridge	MA	02139
R.C.	Levine	36	Highlander	Cambridge	MA	02139
Hagalie	Valcin	85	Pilgrim St	Cambridge	MA	02139
Linda	Tymann	806	Mass Ave	Cambridge	MA	02139
Qumrumesa	Huelu	10	Putnam Rd	Cambridge	MA	02139
Jeff	May	1500	Cambridge St	Cambridge	MA	02139
Julia	Perez	47	Lopez St	Cambridge	MA	02139
Jamie	Corcaran	114	Cambridge St	Cambridge	MA	02139
George	Thomas	395	Broadway	Cambridge	MA	02139
Cathy	Hoffman	67	Pleasant	Cambridge	MA	02139
Kathleen	Maritta	118	Kinnaird	Cambridge	MA	02139
Jennifer	Hess	14	Rockwell St	Cambridge	MA	02139

Smokefree
Yes
Yes
Yes

First Name	Last Name	Street Number	Street	City	State	Zip
Sherry	Williams	21	Valentine St	Cambridge	MA	02139
Christine	Dipietrantonio	28	Gohlaf St	Cambridge	MA	02139
Sandra	Sousa	1204	Cambridge	Cambridge	MA	02139
Susan	Cooke	345	Franklin St	Cambridge	MA	02139
Nytbe	Ganno	248	Broadway	Cambridge	MA	02139
Lynnette	Barnes	39	Hayes St	Cambridge	MA	02139
Rose	Basha	55	Magazine	Cambridge	MA	02139
Joe	Della Penna	211	Prospect St	Cambridge	MA	02139
M.	Calderon	2	Inman St	Cambridge	MA	02139
L.	Washington	20	Upton St	Cambridge	MA	02139
Victor	Preston	345	Franklin St	Cambridge	MA	02139
Lee	Wong	13	Audrey St	Cambridge	MA	02139
Claire	Laparta	21	Clinton St	Cambridge	MA	02139
Theresa	Spartiching	170	Windsor St	Cambridge	MA	02139
Fransua	Espoda		Maine St	Cambridge	MA	02139
Deedee	Shiano	678	Mass Ave	Cambridge	MA	02139
Kimberly	Wilson	260	Putnam Ave	Cambridge	MA	02139
Jennifer	Flammta		Maine St	Cambridge	MA	02139
David	Berger	87	Kinnaird	Cambridge	MA	02139
Latifa	Goughrabo	149	Western Ave	Cambridge	MA	02139
Edisabete	Mhah	284	Windsor St	Cambridge	MA	02139
Suze		205	Western Ave	Cambridge	MA	02139
Julio	Baltodano		Rindge Ave	Cambridge	MA	02140
Yadira	Baca	350	Rindge Ave	Cambridge	MA	02140
Jusetti	Patti	120	Jackson	Cambridge	MA	02140
Annabelle	Winne	4	Newell St	Cambridge	MA	02140
Nelson	Gore	10	Hunboldt St	Cambridge	MA	02140
Barbara	Bulan	75	Jackson Circle	Cambridge	MA	02140
Frederica	Robinson	2380	Mass Ave	Cambridge	MA	02140
Sandra	Rosd	62	Jackson Circle	Cambridge	MA	02140
Diane	Costanza		Iverdun St	Cambridge	MA	02140
Meriam	Figueron	75b	Bolton St	Cambridge	MA	02140
Candace	Maddalo	257	Cambridge St	Cambridge	MA	02141
Veronica	Pena Vaiges	9	Sixth St	Cambridge	MA	02141
Viviana	Vasquez	21	Lambert St	Cambridge	MA	02141
Steven	Magalhes	66	Porter St	Cambridge	MA	02141
Peggy	Lynn	69	Moorclume	Cambridge	MA	02141
Donald	Down	187	Otis St	Cambridge	MA	02141
Luz	Flores	50	York St	Cambridge	MA	02141
Donna	Sousa	134	Webster Ave	Cambridge	MA	02141
Cori	Azevedo	257	Cambridge St	Cambridge	MA	02141
Angelo	Pedro	121	Thorndike St	Cambridge	MA	02141
Georgeanna	Saba	4	Spring Pl	Cambridge	MA	02141

Smokefree
Yes
Yes
Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Martina	Olsson	22	Linaean St	Cambridge	MA	02138	Yes
Deborah	Collins	44	Roberts Rd	Cambridge	MA	02138	Yes
Andrea	Malaguti	33	Peabody Terr. #21	Cambridge	MA	02138	Yes
Laura	Cobb	42	Harvard Yard	Cambridge	MA	02138	Yes
Natalie	Lui	1910	Harvard Yard	Cambridge	MA	02138	Yes
Connie	Arseneault	91	Cushing St	Cambridge	MA	02138	Yes
Virginia	Jay	2	Mt Auburn St 705	Cambridge	MA	02138	Yes
Ellen	Statwan	5	Story St	Cambridge	MA	02138	Yes
David	Lyczkowski	331	Cabot Mail Center	Cambridge	MA	02138	Yes
Johanna	Cooper	15	Fenno St	Cambridge	MA	02138	Yes
Anna	Ackerson	21	Sherman St	Cambridge	MA	02138	Yes
Triphon	Vlagopou	515	Mt Auburn St	Cambridge	MA	02138	Yes
Mark	Vlagopou	515	Mt Auburn ST	Cambridge	MA	02138	Yes
Norma	Finkenstien	32	Alpine St	Cambridge	MA	02138	Yes
Julia	Riseman	6	Holly Ave	Cambridge	MA	02138	Yes
Steven	Yeh	1033	Mass Ave	Cambridge	MA	02138	Yes
Logan	McCarty	542	Eliot Mail Center	Cambridge	MA	02138	Yes
Jason	Wood	331	Leverett Mail Ctr	Cambridge	MA	02138	Yes
Elizabeth	Dinsmore	1039	Mass Ave	Cambridge	MA	02138	Yes
Peter	Wan	25	Elmer ST #2	Cambridge	MA	02138	Yes
Alaja	Benjamin	1151	Mass Ave	Cambridge	MA	02138	Yes
Deborah	Tor	14	Femald Dr	Cambridge	MA	02138	Yes
Kimberly	Arlain	15	Peabody Terrace	Cambridge	MA	02138	Yes
A.	Perkins	48	JFK St	Cambridge	MA	02138	Yes
Maria	Cadaid	11	Peabody Terr. 509	Cambridge	MA	02138	Yes
Elaine	Coolbuth	35	Wendell St	Cambridge	MA	02138	Yes
Allison	Harpe	218	Dunster Mail Ctr	Cambridge	MA	02138	Yes
Andrew	Gillman	48	Loverett Mail Ctr	Cambridge	MA	02138	Yes
RB	Vinken	21	Royal AVe	Cambridge	MA	02138	Yes
Dan	Preston	1175	Mass Ave	Cambridge	MA	02138	Yes
Nicole	Danforth	1699	Cambridge St	Cambridge	MA	02138	Yes
Paul	Browning	2	Peabody Ter #103	Cambridge	MA	02138	Yes
Christop	Vyu	240	Brattle St	Cambridge	MA	02138	Yes
Sarah	Griswold	468	Leverett Mail Ctr.	Cambridge	MA	02138	Yes
Jeannett	Anezo	11	Garden St	Cambridge	MA	02138	Yes
Craig	Slutin	15	Field St	Cambridge	MA	02138	Yes
Wendy	Girsosky	423	Broadway	Cambridge	MA	02138	Yes
Erica	Brilliant	47	Oxford St Box 27	Cambridge	MA	02138	Yes
Vincent	Chin	11	Chilton St #2	Cambridge	MA	02138	Yes
Sidi	Bethgig	276	Harvard St #2	Cambridge	MA	02138	Yes
Eric	Leire	37	Kirkland	Cambridge	MA	02138	Yes
J	Patterson	37	Kirkland	Cambridge	MA	02138	Yes
Barbara	Harris	73	Martin St	Cambridge	MA	02138	Yes
Nancy	Dalrymph	31	Winslow St	Cambridge	MA	02138	Yes
Mary	Bonina	44	Thingvalla Ave	Cambridge	MA	02138	Yes
Jacob	Farmer	19	Willard St	Cambridge	MA	02138	Yes
C	Busch	89	Putnam Ave	Cambridge	MA	02138	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Diane	Twigley	99	Brattle St	Cambridge	MA	02138	Yes
Marie	Jones	8	Putnam	Cambridge	MA	02138	Yes
Michael	Ostachin	127	Appleton St	Cambridge	MA	02138	Yes
Mary	Callahan	45	Blanchard Rd	Cambridge	MA	02138	Yes
Richard	Chasin	2	Appleton St	Cambridge	MA	02138	Yes
Julie	Carter	264	Eliot Mail Ctr	Cambridge	MA	02138	Yes
Elizabeth	England		Broadway	Cambridge	MA	02138	Yes
John	Thomessor	3	Sacremento St	Cambridge	MA	02138	Yes
Johanna	Aeschliman	84	Hammond St	Cambridge	MA	02138	Yes
Paulina	Serrano	121	Holden Green	Cambridge	MA	02138	Yes
Stephen	Grant	17	Sparks St	Cambridge	MA	02138	Yes
Dawn	Anthmann	1200	Mass Ave #38 W	Cambridge	MA	02138	Yes
Jane	Parl	2135	Harvard Yard	Cambridge	MA	02138	Yes
Megan	Whyte	470	Eliot Mail Ctr	Cambridge	MA	02138	Yes
Jeanne	Petropulos	51	Ellery St	Cambridge	MA	02138	Yes
Lawson	Fite	439	Eliot Mail Ctr	Cambridge	MA	02138	Yes
Larry	Kurte	24	Peabody Terrace #	Cambridge	MA	02138	Yes
Gwen	Acton	20	Mt. Auburn	Cambridge	MA	02138	Yes
Mark	Powlah	44	Thingvalla Ave	Cambridge	MA	02138	Yes
Nicole	King	206	Lowel Mail Ct	Cambridge	MA	02138	Yes
Carly	Cox	340	Mather House	Cambridge	MA	02138	Yes
E	Garvey	10	DeWolfe St #64	Cambridge	MA	02138	Yes
Brent	Zettel	249	Dunster Mail Ctr	Cambridge	MA	02138	Yes
Amy	Englishmen	1626	Mass Avenue	Cambridge	MA	02138	Yes
Connie	Shin	1626	Mass Avenue	Cambridge	MA	02138	Yes
Lisa	Canpeau	115	Mt. Auburn	Cambridge	MA	02138	Yes
Betsy	Kirk	121	Brattle Street	Cambridge	MA	02138	Yes
Deborah	Webster	12	Wendell Street	Cambridge	MA	02138	Yes
Ed	Ellas	240	Albany St.	Cambridge	MA	02138	Yes
B.	Ryan	23	Sullivan	Cambridge	MA	02138	Yes
Kareeme	Riley	4	University	Cambridge	MA	02138	Yes
Kelsey	Meyers	361	Harvard St.	Cambridge	MA	02138	Yes
Imani	Riley	4	University	Cambridge	MA	02138	Yes
Cate	MacKinnon	5	Garden Ct. #1	Cambridge	MA	02138	Yes
Diana	McLeonard	47	Oxford St.	Cambridge	MA	02138	Yes
Courtney	Hale	22	Prospect St.	Cambridge	MA	02138	Yes
Maryann	Connell	160	Appleton St	Cambridge	MA	02138	Yes
John	Urader	8	Dunitable	Cambridge	MA	02138	Yes
Renee	Kelso	1626	Mass Avenue	Cambridge	MA	02138	Yes
Bonnie	Ryan	23	Sullivan Road	Cambridge	MA	02138	Yes
Richard	Chasin	2	Appleton St	Cambridge	MA	02138	Yes
Kevin	Mach MD	25	Park Ave	Cambridge	MA	02138	Yes
Victoria	Tamas	41c	Cushing St	Cambridge	MA	02138	Yes
Jennifer	Patton	64	Wendell St.	Cambridge	MA	02138	Yes
Emily	Vail	4	Mt. Auburn #5	Cambridge	MA	02138	Yes
Ruth	Drasin	29	Dana St. #1	Cambridge	MA	02138	Yes
Timothy	Downing	84	Prescott St	Cambridge	MA	02138	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Pamela	Hogan	47a	Dana St	Cambridge	MA	02138	Yes
Taria	Ralli	35	Concord Ave	Cambridge	MA	02138	Yes
Kelly	Juarez	38	Linniean #10	Cambridge	MA	02138	Yes
Helen	Fein	46	Irving St	Cambridge	MA	02138	Yes
Jose	Rojas		PO Box 380746	Cambridge	MA	02138	Yes
Steve	Walch	207	Prospect St.	Cambridge	MA	02139	Yes
Ulf	Baumann	343 1/2	Broadway	Cambridge	MA	02139	Yes
Scott	Atkins	675	Mass Ave.	Cambridge	MA	02139	Yes
Ann	Dailey	42	Fayette St	Cambridge	MA	02139	Yes
William	Jayo	54	Jay	Cambridge	MA	02139	Yes
Ed	Ayres	55	Essex St.	Cambridge	MA	02139	Yes
Emma	Wattans	68	Hampshore St	Cambridge	MA	02139	Yes
Robert	Thames		Fairmont St	Cambridge	MA	02139	Yes
Lee	Swillow	99	Magazine St	Cambridge	MA	02139	Yes
Jeffrey	Hubin	23	Fayette St	Cambridge	MA	02139	Yes
Stephani	Luper	2371	Franklin St	Cambridge	MA	02139	Yes
James	Panico	5	Peryy St	Cambridge	MA	02139	Yes
Linda	Tymann	806	Mass Ave	Cambridge	MA	02139	Yes
Paul	Schlaver	188	Green Srt	Cambridge	MA	02139	Yes
Dorothy	Brown	12	Inman St	Cambridge	MA	02139	Yes
Sylvia	Watson	212	Green St	Cambridge	MA	02139	Yes
Pam	Hogan	47a	Dana St	Cambridge	MA	02139	Yes
L.	Mohoaski	35	Brookline Street	Cambridge	MA	02139	Yes
Lee	Farris	269	Norfolk Street	Cambridge	MA	02139	Yes
Lucille	Council	237	Franklin St	Cambridge	MA	02139	Yes
AJ	Valentino	9	Dargloss St	Cambridge	MA	02139	Yes
Marc	Newmark	101	Magazine Street #	Cambridge	MA	02139	Yes
Nancy	Messom	166	Hampshire Street	Cambridge	MA	02139	Yes
Cecelia	Griffin	9	Hews St	Cambridge	MA	02139	Yes
Lucille	Adams	237	Franklin St	Cambridge	MA	02139	Yes
Noelle	Schroeder	26	Tufts Street	Cambridge	MA	02139	Yes
Ellen	Corabiner	5	St. Mary Rd	Cambridge	MA	02139	Yes
Stephen	Zecher	42	Fayette St	Cambridge	MA	02139	Yes
Robert	Fraser	45	River Street	Cambridge	MA	02139	Yes
Kendra	Gittens	258	River ST	Cambridge	MA	02139	Yes
Joe	MacLean	303	Broadway	Cambridge	MA	02139	Yes
Tarisha	Tanes	51	Norfolk St	Cambridge	MA	02139	Yes
James	Casarella	156	Allston St	Cambridge	MA	02139	Yes
Chest	Cooper	321	River St	Cambridge	MA	02139	Yes
Philip	Kelsey	278	Broadway	Cambridge	MA	02139	Yes
Rima	Freeman	31	Bay St	Cambridge	MA	02139	Yes
Paul	Casathagor	176	Prospect St	Cambridge	MA	02139	Yes
Stephen	Harrinata	103	Norfolk St	Cambridge	MA	02139	Yes
Katrina	Hewitt	95	Pine St	Cambridge	MA	02139	Yes
Dinesh	Thomson	80	Prospect St.	Cambridge	MA	02139	Yes
Belicia	Wilkinson	19	Howard St	Cambridge	MA	02139	Yes
Nancy	Hall	3	Putnam Gds	Cambridge	MA	02139	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Aaron	Winthers	475	Memorial Dr	Cambridge	MA	02139	Yes
Charles	Venditti	129	Franklin St #218	Cambridge	MA	02139	Yes
Andrea	Finnegan	32	New Towne Ct	Cambridge	MA	02139	Yes
Ryu	Kinz	285	Harvard sT	Cambridge	MA	02139	Yes
Mark	Nahabedian	66	Prospect St	Cambridge	MA	02139	Yes
Aaron	Marsh	292	Main	Cambridge	MA	02139	Yes
Mike	Tryfowidis	474	Memorial Dr	Cambridge	MA	02139	Yes
Clara	David	474	Memorial Dr	Cambridge	MA	02139	Yes
Taira	Torres	39	William St	Cambridge	MA	02139	Yes
Melissa	Castilla	6	Mildred Hamilton	Cambridge	MA	02139	Yes
Cheryl	Kennedy	47	Lopez St #6	Cambridge	MA	02139	Yes
Meredith	Knight	19	Worcester Street	Cambridge	MA	02139	Yes
Adriana	Uvacqua	550	Memorial Dr	Cambridge	MA	02139	Yes
Nick	Papadakis		Box 583	Cambridge	MA	02139	Yes
Lynn	Jean-Demb	23	Elm	Cambridge	MA	02139	Yes
Richie	Lacy	19	Clary St	Cambridge	MA	02139	Yes
Wanda	Allen	349	Broadway	Cambridge	MA	02139	Yes
Joan	Welch	349	Broadway	Cambridge	MA	02139	Yes
Jane	Moore	349	Broadway	Cambridge	MA	02139	Yes
Cazyo	Kauffman	349	Broadway	Cambridge	MA	02139	Yes
Micky	Towo	77	Bishop Allen Dr	Cambridge	MA	02139	Yes
Jane	Saache	82	Tremont St	Cambridge	MA	02139	Yes
Samuel	Siverman	97	Hancock St	Cambridge	MA	02139	Yes
Christop	Myas	84	Tremont St	Cambridge	MA	02139	Yes
Cherie	Rankin	84	Tremont sT	Cambridge	MA	02139	Yes
Juliet	Chastain	184	Amory St	Cambridge	MA	02139	Yes
Liz	Logus	4	Antrim St	Cambridge	MA	02139	Yes
Sharon	Arambell	312	Prospect St #3	Cambridge	MA	02139	Yes
Brian	Glenn	6	Marie Ave #2	Cambridge	MA	02139	Yes
Malika	Napoli	77	Bishop Allen Dr	Cambridge	MA	02139	Yes
Rahlyu	Napoli	77	Bishop Allen Dr	Cambridge	MA	02139	Yes
Allison	Peroy	295	Windsor	Cambridge	MA	02139	Yes
David	Brown	287	Mass Ave.	Cambridge	MA	02139	Yes
Ana	Carmo	398	Norfolk St	Cambridge	MA	02139	Yes
Graig	Stewart	149	Windsor St	Cambridge	MA	02139	Yes
S.	Greene	38	Lee St	Cambridge	MA	02139	Yes
Tony	Chobot	143	Albany St	Cambridge	MA	02139	Yes
Larry	Miller	83	Amory St	Cambridge	MA	02139	Yes
Steve	Rotolo	2	Washington Ct	Cambridge	MA	02139	Yes
L.	Washington	20	Upton St	Cambridge	MA	02139	Yes
Chris	McLaughlin	109	River St #11A	Cambridge	MA	02139	Yes
Emily	Branley	237	Pearl St #1	Cambridge	MA	02139	Yes
Alison	Venley	218	Franklin St	Cambridge	MA	02139	Yes
Gene	Vroom	11	Rolling Ct	Cambridge	MA	02139	Yes
Rocky	Jeanty	117	Harvard ST	Cambridge	MA	02139	Yes
Gerard	Leger	21	Newtone Ct #85	Cambridge	MA	02139	Yes
Kusvin	Batra	157	Elie St	Cambridge	MA	02139	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Jessica	McDaniel	7	Jackson	Cambridge	MA	02139	Yes
Marie	Haskell	852	Mass	Cambridge	MA	02139	Yes
Sabine	Cadeau	47	Corcoran	Cambridge	MA	02139	Yes
Linda	Costa	199	Prospect St #7	Cambridge	MA	02139	Yes
Larry	Donovan	9	Austin Park	Cambridge	MA	02139	Yes
Richard	Porudsuski	538	Green St Apt 2	Cambridge	MA	02139	Yes
Randy	McNeely	5	Suffolk St	Cambridge	MA	02139	Yes
Steven	Dreifach	143	Albany St #302	Cambridge	MA	02139	Yes
Bill	Ryan	2	Newton St	Cambridge	MA	02139	Yes
Amy	Davidson	11	Rolling Ct	Cambridge	MA	02139	Yes
Kuo-Hsiu	Wong	471	Memorial Dr	Cambridge	MA	02139	Yes
Jasmine	Carrington	194	Green St	Cambridge	MA	02139	Yes
Dafny	Suazo	39	Tremont St	Cambridge	MA	02139	Yes
Jan	Shafer	68	Fairmont St	Cambridge	MA	02139	Yes
Menyone	Bowers	120	Harvard St	Cambridge	MA	02139	Yes
Josh	Bittker	410	Memorial Dr	Cambridge	MA	02139	Yes
Dan	Wainstock	237	Pearl St	Cambridge	MA	02139	Yes
Aparna	Yogerth	812	Memorial Dr	Cambridge	MA	02139	Yes
Veronica	Garcia	77	Massachusetts Av	Cambridge	MA	02139	Yes
Raisa	Garcia	77	Massachusetts Av	Cambridge	MA	02139	Yes
Eric	Olson	52a	Pleasant St	Cambridge	MA	02139	Yes
Christina	Williams	21	Valentine St #5	Cambridge	MA	02139	Yes
Judy	Casarella	156	Allston St	Cambridge	MA	02139	Yes
Jay	Hoffman	205	Green St #3	Cambridge	MA	02139	Yes
Janet	Singer	5	St Mary	Cambridge	MA	02139	Yes
Leah	Sugarman	2	Arnold Circle #1	Cambridge	MA	02139	Yes
Laura	Neves	132	Cherry St	Cambridge	MA	02139	Yes
Jane	Deitrich	132	Cherry st	Cambridge	MA	02139	Yes
R.	Barlen	348	Franklin St	Cambridge	MA	02139	Yes
Jennifer	Rock	7	Temple St	Cambridge	MA	02139	Yes
Martin	Jukovsky	220	Broadway	Cambridge	MA	02139	Yes
Jim	Wu	237	Franklin	Cambridge	MA	02139	Yes
Betty	Trinks	1493	Cambridge St	Cambridge	MA	02139	Yes
Ricki	Lacy	19	Clary St	Cambridge	MA	02139	Yes
Amy	Berger	345	Franklin St	Cambridge	MA	02139	Yes
Ann	Dailey	48	Fayette St. #1	Cambridge	MA	02139	Yes
Nichole	Philips	929	House	Cambridge	MA	02139	Yes
Steve	Zecher	42	Fayette St	Cambridge	MA	02139	Yes
Carlos	Ferran	478	Putnam Ave #1	Cambridge	MA	02139	Yes
Victoria	Heredia	478	Putnam Ave #1	Cambridge	MA	02139	Yes
Eileen	Grabiner	5	St. Mary Rd	Cambridge	MA	02139	Yes
Bruce	Cox	812	Memorial Dr	Cambridge	MA	02139	Yes
C.	Penrose	36	Peridakis Ter	Cambridge	MA	02139	Yes
Karen	Corsano	287	Harvard St. #44	Cambridge	MA	02139	Yes
Paul	Jones	1493	Cambridge St	Cambridge	MA	02139	Yes
Mary Jo	Dangerfield	12	Rockingaham St	Cambridge	MA	02139	Yes
Mario	Darila	174	Pleasant St	Cambridge	MA	02139	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Natasha	Hustrunk	9	Chester St	Cambridge	MA	02139	Yes
Maria	Rios	394	Norfolk St	Cambridge	MA	02139	Yes
Heber	Passos	255	Elm St	Cambridge	MA	02139	Yes
Susan	Nutt	124	Hampshire	Cambridge	MA	02139	Yes
Tony	Mack	108	Magazine St	Cambridge	MA	02139	Yes
Steve	Miller	92	Henry St	Cambridge	MA	02139	Yes
Linda	Boredkin		Cambridge Health	Cambridge	MA	02139	Yes
Dorothy	Wendell Willi	32	Bigelow St	Cambridge	MA	02139	Yes
Gail	Willett	72	Chester St	Cambridge	MA	02139	Yes
Jeremy	Benjamin	5	Florence St #2	Cambridge	MA	02139	Yes
Sally	Beulasset	92	Henry St	Cambridge	MA	02139	Yes
Ron	Rivera	46	Williams St	Cambridge	MA	02139	Yes
Judy	Arbetter	331a	Harvard St	Cambridge	MA	02139	Yes
Grace	Carson	411	Franklin St	Cambridge	MA	02139	Yes
Cindy	Brodsky	23	Watson St	Cambridge	MA	02139	Yes
Deborah	Stollard	5	Reed St Terrance	Cambridge	MA	02140	Yes
Ginny	Chomitz	205	Bridge Ave	Cambridge	MA	02140	Yes
Dolores	Webb	64	Clifton Street	Cambridge	MA	02140	Yes
Lauren	Krotyr	225	Walden Street	Cambridge	MA	02140	Yes
Deirdre	Hunter	4	Reed St Terrace	Cambridge	MA	02140	Yes
Jennifer	Deaver	17	Walden Sq Rd	Cambridge	MA	02140	Yes
Judith	Swardeu	32	Blake St	Cambridge	MA	02140	Yes
Rebecca	Davis	9	Chester St #38	Cambridge	MA	02140	Yes
Marie	Newman	13	Walden Sq Apt 32	Cambridge	MA	02140	Yes
Michael	Branloy	27	Seven Pines Aven	Cambridge	MA	02140	Yes
Ismael	Suntano	95	Jackson Circle	Cambridge	MA	02140	Yes
Milinda	Lucas	7	Sargent St #3	Cambridge	MA	02140	Yes
Debbi	Sonsino	20	Rindge Avenue	Cambridge	MA	02140	Yes
Katia	Johnson	52	Mt. Pleasant St	Cambridge	MA	02140	Yes
Rebecca	Ennen	22	Forest Street #2	Cambridge	MA	02140	Yes
Lauren	Gibbs	3	Newport Road #1	Cambridge	MA	02140	Yes
John	Croll	162	Elm Street	Cambridge	MA	02140	Yes
Valery	Lam	33	Norris St #2	Cambridge	MA	02140	Yes
Sienza	B.	22	Haskell Street	Cambridge	MA	02140	Yes
Terry	Cline	22	Whittier Street	Cambridge	MA	02140	Yes
Noah	McIntyre	25	Cogswell Ave	Cambridge	MA	02140	Yes
Jack	Wise	22	Wittier Street	Cambridge	MA	02140	Yes
Clara	Diebold	1851	Mass Avenue	Cambridge	MA	02140	Yes
Michael	Cooper	22	Lincoln Way	Cambridge	MA	02140	Yes
Richard	Simpson	25	Allewife Brook Pkw	Cambridge	MA	02140	Yes
John	Croll	162	Elm Street	Cambridge	MA	02140	Yes
Michna	Jean-Denis	97	Jackson Circle	Cambridge	MA	02140	Yes
Linda	Napier	1050	Mass Ave	Cambridge	MA	02140	Yes
Emily	G.	492	Gliffon St.	Cambridge	MA	02140	Yes
Cynthia	Finney	117	Clay Street	Cambridge	MA	02140	Yes
Darlene	Rue	326	Rindge Ave	Cambridge	MA	02140	Yes
Yong	Xien Deng	364	Rindge AVe	Cambridge	MA	02140	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Steve	Schnapp	32	Clay St	Cambridge	MA	02140	Yes
Honey	Schnapp	32	Clay St	Cambridge	MA	02140	Yes
Hannah	Goodwin	94	Clifton St	Cambridge	MA	02140	Yes
Jennifer	Webb	64	Clifton St	Cambridge	MA	02140	Yes
Daniel	Kammen	69	Havey St	Cambridge	MA	02140	Yes
Kathleen	Jordan-McC	98	Clay St	Cambridge	MA	02140	Yes
June	Macdonald	34	Madison Ave	Cambridge	MA	02140	Yes
Daphne	Luscap	30	Mt Pleasant	Cambridge	MA	02140	Yes
Jamila	Khelita	21	Walden Sq Rd	Cambridge	MA	02140	Yes
Victor	Pinto	2b	Chester St	Cambridge	MA	02140	Yes
Vaila	Klafanoff	32	Jackson Rd	Cambridge	MA	02140	Yes
Ellen	Kolton	30	Arlington St	Cambridge	MA	02140	Yes
Ava	Arid	362	Rindge Av	Cambridge	MA	02140	Yes
Lisa	Birk	20	Columbus Ave	Cambridge	MA	02140	Yes
margarit	Cuz	364	Rindge Ave	Cambridge	MA	02140	Yes
Norma	Santiago	362	Rindge ave	Cambridge	MA	02140	Yes
Rosamar	Santiago	362	Rindge Ave	Cambridge	MA	02140	Yes
Janet	Green	3	Walden Sq Rd	Cambridge	MA	02140	Yes
Diane	Costanza	1	Vedin St	Cambridge	MA	02140	Yes
Michelle	Donahue	140	Dudley St	Cambridge	MA	02140	Yes
Frances	Dubnowski	2050	Mass Ave	Cambridge	MA	02140	Yes
Mahnaz	Akhlen	364	Rindge Ave	Cambridge	MA	02140	Yes
David	Suskind	9	Chester St	Cambridge	MA	02140	Yes
Patricia	Murphy		TCN	Cambridge	MA	02140	Yes
Lisa	Linarte	31	Norris St	Cambridge	MA	02140	Yes
Lorrae	Johnson	11	Walden Sq Rd	Cambridge	MA	02140	Yes
Jay	Burnette	18	Lincoln Way	Cambridge	MA	02140	Yes
Rosa	Ratle	402	Rindge Ave	Cambridge	MA	02140	Yes
Radi	Triant	7	Arlington St	Cambridge	MA	02140	Yes
Bill	Corrigan	4a	Sargent ST	Cambridge	MA	02140	Yes
Joel	Nogie	94	Clifton St	Cambridge	MA	02140	Yes
Jennifer	Alibor	9	Russell ST	Cambridge	MA	02140	Yes
Gwen	Frankfelder	175	Richdale Ave	Cambridge	MA	02140	Yes
Judith	Weiss	21	Orchard St	Cambridge	MA	02140	Yes
Adrenne	Leslie	21	Walden Sq. Road	Cambridge	MA	02140	Yes
Kuiy	Nichols	364	Rindge Ave	Cambridge	MA	02140	Yes
T.	Davis	136a	Walden St	Cambridge	MA	02140	Yes
Kim	Blanton	10a	Day St	Cambridge	MA	02140	Yes
Zentith	Mondesi	21	Walden St	Cambridge	MA	02140	Yes
Amy	Neill	33	Eustis St	Cambridge	MA	02140	Yes
Naji	Khan	9	Walden Sq Rd	Cambridge	MA	02140	Yes
Vivian	Amittle	7	Walden Sq Rd	Cambridge	MA	02140	Yes
Deanna	Costa	10	Lancorsten St	Cambridge	MA	02140	Yes
Sanita	Tabor	380	Columbia St	Cambridge	MA	02141	Yes
Mariam	Constatian	187	Otis St	Cambridge	MA	02141	Yes
Maria	Fernandes	114	Berkshire St	Cambridge	MA	02141	Yes
Maria	Silva	118	Berkshire St	Cambridge	MA	02141	Yes

firstnam	lastname	street n	street	city	state	zipcode	support smokefree rest
Sara	Gorgio	186	Thorndike	Cambridge	MA	02141	Yes
Abilio	Antunes	116 1/2	Berkshire St	Cambridge	MA	02141	Yes
laudis	Penetna	1108	Cambridge St	Cambridge	MA	02141	Yes
Ana	Antunes	116 1/2	Berkshire St	Cambridge	MA	02141	Yes
Maria	Nardella	413	Windsor St	Cambridge	MA	02141	Yes
Josh	Brown	180	Third St	Cambridge	MA	02141	Yes
Anabella	Quelha	309	Cardinal Medeiros	Cambridge	MA	02141	Yes
Andrew	Fernandes	114	Berkshire St	Cambridge	MA	02141	Yes
Mary	Lou	54	Plymouth St	Cambridge	MA	02141	Yes
Joel	Giorgio	186	Thorndike St	Cambridge	MA	02141	Yes
Debra	Giorsio	186	Thorndike St	Cambridge	MA	02141	Yes
Jillian	Lyons	144	Williow	Cambridge	MA	02141	Yes
Yohanny	Rodrieguez	394	Everteze Way	Cambridge	MA	02141	Yes
Eleni	Mentis	15	Lambert ST	Cambridge	MA	02141	Yes
Sherry	Zhao		MIT	Cambridge	MA	02141	Yes
Allison	Johnson		MIT	Cambridge	MA	02141	Yes
Stephani	Waner		MIT	Cambridge	MA	02141	Yes
Michelle	Park		MIT	Cambridge	MA	02141	Yes
Alan	Thomas	365	Weirteze Way	Cambridge	MA	02141	Yes
Laurea	Vellucci	223	Hurley St	Cambridge	MA	02141	Yes
Donna	Keefe	183	Third St	Cambridge	MA	02141	Yes
E.M.	Santos	18	Gore ST	Cambridge	MA	02141	Yes
Maureen	Nichols	124	Spring St	Cambridge	MA	02141	Yes
Arveillo	Seragen	15	Lambert St	Cambridge	MA	02141	Yes
John	May	114	Charles St #2	Cambridge	MA	02141	Yes
Donald	Doran	187	Otis St	Cambridge	MA	02141	Yes
Candy	Guther	186	Third	Cambridge	MA	02141	Yes
Patrick	Fitzgeral	100	Memorial Dr	Cambridge	MA	02142	Yes
Bruce	Hicks	100	Memorial Dr	Cambridge	MA	02142	Yes
Irmgard	Hicks	100	Memorial Dr	Cambridge	MA	02142	Yes
Marianna	Parker	70	Amherst S	Cambridge	MA	02142	Yes
Clara	Davidson	21	Burnside Avenue	Cambridge	MA	02144	Yes
Amir	Zarrinpar		PO box 381811	Cambridge	MA	02138	Yes

SMOKE-FREE RESTAURANTS

stamp

_____ **Yes,** I want all restaurants in Cambridge to be smoke-free

_____ No, I don't want all restaurants in Cambridge to be smoke-fre

_____ **I work in Cambridge.**

Return to:

Cambridge Public Health Department
1493 Cambridge Street
Cambridge, MA 02139

Name _____
Street _____
City _____ **Zipcode** _____

Comments: _____
_____
_____

The Five City Tobacco Control Collaborative serves the cities of Cambridge, Chelsea, Everett, Revere, and Somerville.

YES OR NO

FOR

SMOKE-FREE RESTAURANTS

WHAT DO *YOU* THINK?

Amend Ch 8.28 by deleting the present Chapter 8.28 and substituting in its place a new Sec 8.28 entitled "Restrictions ...

The new , to prohibit smoking in restaurants unless the restaurant obtains a permit from the County Health Department; to increase the penalties for violation of the ordinance for both criminal and noncriminal dispositions to strengthen restrictions on youth access to tobacco.

8 octavo

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

April 26, 1999

To The Honorable, The City Council:

Please find attached a response to Council Order No. 2, dated November 9, 1998, which requested information on proposed regulations regarding smoking, received from Chief Public Health Officer Harold Cox. This response should be forwarded to the Health & Hospitals Committee and then to the Ordinance Committee for action on the proposed amendments to the Ordinance.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
Attachments

Consent Agenda #16 Cal. 16

Relative to Council Order No. 2 dated November 9, 1998, which requested information on proposed regulations regarding smoking.

In City Council April 26, 1999

CHARTER RIGHT
BY T. Tourney
5/3/99

Referred to
Health + Hospital Committee
+ Ordinance Committee
5/6 Sent to C. Trustfellows

Cambridge Public Health Department
Cambridge Health Alliance

1493 Cambridge Street • Cambridge, MA 02139
617.498.1480 • Fax 617.498.1514

TO: Robert W. Healy, City Manager

FROM: Harold Cox, Chief Public Health Officer

DATE: April 16, 1999

SUBJECT: In reference to council order #002, dated 11/9/98

As requested in your Council Order, a packet of information regarding environmental tobacco smoke is enclosed. Specifically, the Cambridge Health Department staff have gathered information in response to items 4-8.

Following the October meeting of the Health and Hospital Subcommittee, we spent several months meeting with a working group that included restaurant owners and members of Cambridge United for Smoking Prevention. The work of the group concluded in January with a compromize proposal that is an important step to protecting the health of Cambridge residents. At the conclusion of this group's work, we sponsored meetings for tobacco retailers and restaurants in February and March.

We look forward to making a presentation to the Health and Hospital Subcommittee on May 4th.

SUMMARY OF PACKET PRESENTED TO CITY COUNCIL

1. Scientific information on secondhand smoke. This section includes the final report of the California Environmental Protection Agency which many public health experts consider to be one of the best summaries available. Also enclosed are two articles on in workplaces including restaurants. These articles present information on the many health risks of secondhand smoke.

2. Copies of regulations from Boston, Brookline and Somerville. Copies are enclosed along with a copy of a comparison chart. Many aspects of the proposed ordinance are similar to Boston and Somerville Board of Health regulations. The Brookline by-law is stricter than our proposal.

3. A summary of how the current ordinance is working in regards to restaurants and youth access is enclosed. The summary highlights some areas of concern including retailers selling tobacco to minors at a higher rate than some of the surrounding communities. Most communities have stricter penalties which mirror the penalties in the state law. Other concerns include the easy access of tobacco products through self–service displays and vending machines. The most serious area of concern is smoking in restaurants. Currently, about 46% of restaurants allow smoking in areas that range from 10% to 100%. Restaurants that allow smoking include pizza and sub shops along with samll family restaurants.

4. A brief report on whether second hand smoke can be measured and monitored with nonsmoking and smoking sections has been included. Copies of scientific studies are available.

5. Copies of the current ordinance, a draft of the proposed ordinance and a series of charts that show the difference between the current ordinance and the proposal. Also included is one chart which summarizes how the Public Health Department moved from a proposal of 100% smokefree to the current proposal.

Secondhand Smoke: The Facts

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

Secondhand smoke has been identified as a Class A Carcinogen. This includes the most potent cancer causing agents like benzene, asbestos, and arsenic.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke kills 53,000 nonsmokers per year in the United States, making it the third leading cause of preventable death in the United States.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Exposure to secondhand smoke is associated with a 20% increase in the hardening of the arteries, which leads to heart attacks. This damage is irreversible.
(Howard, George, Dr.PH, et. al. "Cigarette Smoking and Progression of Atherosclerosis" Journal of the American Medical Association. 279(2), January 14, 1998.)

Each year, 37,000 people die from heart disease caused by secondhand smoke.
(USEPA, Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders. EPA/600/6-90/006B, May 1992.)

Secondhand smoke causes 3,000 deaths per year from lung cancer.
(USDHHS, The Health Consequences of Involuntary Smoking: A Report of the surgeon General. DHHS Publication (CDC) 90-8416, 1986.)

Women married to smokers have a 40% greater risk of lung cancer than women married to non-smokers.
(Glantz, Stanton A, Ph.D. and W. Parmley, MD "Passive Smoking and Heart Disease: Epidemiology, Physiology, and Biochemistry." Circulation. 89:1-12, 1991.)

Concentrations of secondhand smoke in bars that allow smoking are between 440-450% higher than in residential settings.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

Lung cancer risk among restaurant employees that do not smoke is an average of 50% higher than among the general public.
(Seigel, Michael, MD "Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects." Journal of the American Medical Association. 270(4), July 28, 1993.)

The reported prevalence of asthma, wheezing, and chronic bronchitis was higher in children exposed to secondhand smoke.
(Gergen, Peter, J, MD, MPH, et. al. "The Burden of Environmental Tobacco Smoke Exposure on the Respiratory Health of Children 2 Months Through 5 Years of Age in the United States" Pediatrics. 101(2), 1998.

Second hand smoke contains 4000 chemicals, 43 are known carcinogens, and 401 are toxic.
(USDHHS, Smoking Tobacco and Health: A Fact Book. DHHS Publication (CDC)87-8397, 1989).

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

February 24, 1998

019

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

2 of 3

ORDINANCE NO. 1225

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

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: 1992 election returns demonstrate that more than 60% 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: Evidence demonstrates that tobacco in extremely addictive; and

WHEREAS: 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS 82% of all smokers begin smoking as teenagers; 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: 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 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 require access of persons with disabilities to public places and workplaces, have deemed impaired respiratory function a disability; now therefore be it

RESOLVED: That 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

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

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

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

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

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

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

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

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

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within

twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in 8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

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

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child

care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.

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

Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.

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

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

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

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

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

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

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;
(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;
(6) Smokeshops;
(7) Performers upon the stage, provided that the smoking is part of a theatrical production;
(8) Religious ceremonies where smoking is part of the ritual;
(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;
(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;
(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;
(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;
(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and
(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:
Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

The decision to grant a variance shall be in the sole discretion of the Commissioner of Health or his/her designee, based upon determination that such a variance is in the public interest. The Commissioner may consider, but is not limited to, the following criteria when determining whether or not to grant a waiver:
(1) The efforts made by the entity to comply with the ordinances;
(2) Whether granting the waiver will result in an appreciable danger to the public health;
(3) Whether enforcement of the ordinance will cause manifest injustice to the entity.

8.28.100. Violations and Penalties:
A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars

($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.110 Definitions for restrictions on smoking in restaurants

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*
Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code and Cambridge municipal code.
License Commission: Composed of three commissioners under Chapter 95 of the Special Act of 1922; said commission regulates and issues licenses for restaurants, entertainment facilities and clubs within the City of Cambridge.
Restaurant: Any eating or entertainment establishment which possesses a Common Victualer License under the provisions of M.G.L. c. 140. In addition, the establishment could hold a beer and wine or all alcohol pouring license.
Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.
Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display **at the entry(s) of the premises and** upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

(9) A sign provided by the Cambridge Public Health Department must be placed on all entryways that indicates that smoking is allowed in the establishment.

(10) ***The permit which indicates percentage of seats in the no smoking and smoking area of the restaurant and conditions for exception must be displayed near the main entrance and made visible and legible for patrons entering the establishment.***

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for five days

C. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed five (5) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may suspend the *permit to allow smoking* for fourteen days.

D. The Commissioner of Health or his/her designee may revoke a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed six (6) or more violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to revoke a *permit to allow smoking*, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner, after a hearing, may revoke the *permit to allow smoking.*

E. As an alternative to initiating criminal proceedings, violations of section 8.28.120 may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

F. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

8.28.140 Implementation:

This revised ordinance will be effective June 1, 1999.

In City Council June 21, 1999.
Passed to be Ordained as amended by a yea and nay vote:-
Yeas 8; Nays 1; Absent 0.

ATTEST:-

D. Margaret Drury
City Clerk

ORDINANCE NO. 1225

Final Publication Number 2848. First Publication in the Chronicle on May 20, 1999.

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

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:

Amend Chapter 8.28 by deleting the present Chapter 8.28 and substituting a new Section 8.28 entitled "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places," as amended.

In City Council June 21, 1999.
Passed to be Ordained as amended by a yea and nay vote:-
Yeas 8; Nays 1; 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 Zoning 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.

Cambridge Public Health Department
Cambridge Health Alliance

1493 Cambridge Street • Cambridge, MA 02139
617.498.1480 • Fax 617.498.1514

Memorandum

To: Cambridge City Council

CC: Robert Healy, City Manager

Margaret Drury, City Clerk

From: Allyson Doyle, Tobacco Control Coordinator

Date: May 18, 1999

Re: Tobacco Control Ordinance

Since the Health and Hospital Meeting of May 4, 1999 the Cambridge Public Health Department has continued to meet with restaurants, city departments, and City Councilors. Through these meeting 4 possible amendments to the original proposal have been drafted. These amendments serve to further clarify the original intent of the proposal.

Enclosed you will find a copy of draft 6A of the amendment to Ordinance No. 1165 regarding Tobacco Control. This draft includes the 4 possible amendments we have drafted. Also included with draft 6A is a one-page synopsis of the possible amendments and an explanation on why they are necessary.

If you have questions or concerns please call me at 498-1480 extension 212.

MAY 18 P 2:53
CITY CLERK

FOUR PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 6A)

DRAFT

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

4. page 11, 8.28.120 Section D.
A new number 9
(9) If the Commissioner of Health or his/her designee refused to grant a permit to allow smoking, a restaurant owner may appeal to the City Manager for consideration.
Reason for amendment: No appeal process was in draft.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 6A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: The City of Cambridge.
Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code.
Minor: Any individual who is under the age of eighteen (18).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

(9) If the Commissioner of Health or his/her designee refuses to grant a permit to allow smoking a restaurant owner may appeal to the City Manager for consideration.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the

Cambridge Public Health Department
Cambridge Health Alliance

1493 Cambridge Street • Cambridge, MA 02139
617.498.1480 • Fax 617.498.1514

Memorandum

To: Cambridge City Council

CC: Robert Healy, City Manager

Margaret Drury, City Clerk

From: Allyson Doyle, Tobacco Control Coordinator

Date: May 18, 1999

Re: Tobacco Control Ordinance

Since the Health and Hospital Meeting of May 4, 1999 the Cambridge Public Health Department has continued to meet with restaurants, city departments, and City Councilors. Through these meeting 4 possible amendments to the original proposal have been drafted. These amendments serve to further clarify the original intent of the proposal.

Enclosed you will find a copy of draft 6A of the amendment to Ordinance No. 1165 regarding Tobacco Control. This draft includes the 4 possible amendments we have drafted. Also included with draft 6A is a one-page synopsis of the possible amendments and an explanation on why they are necessary.

If you have questions or concerns please call me at 498-1480 extension 212.

1999 MAY 18 P 3:53
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

FOUR PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 6A)

DRAFT

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

4. page 11, 8.28.120 Section D.
A new number 9
(9) If the Commissioner of Health or his/her designee refused to grant a permit to allow smoking, a restaurant owner may appeal to the City Manager for consideration.
Reason for amendment: No appeal process was in draft.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 6A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

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

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking.*

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

(9) If the Commissioner of Health or his/her designee refuses to grant a permit to allow smoking a restaurant owner may appeal to the City Manager for consideration.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the

Cambridge Public Health Department
Cambridge Health Alliance

1493 Cambridge Street • Cambridge, MA 02139
617.498.1480 • Fax 617.498.1514

Memorandum

To: Cambridge City Council

CC: Robert Healy, City Manager

Margaret Drury, City Clerk

From: Allyson Doyle, Tobacco Control Coordinator

Date: May 18, 1999

Re: Tobacco Control Ordinance

Since the Health and Hospital Meeting of May 4, 1999 the Cambridge Public Health Department has continued to meet with restaurants, city departments, and City Councilors. Through these meeting 4 possible amendments to the original proposal have been drafted. These amendments serve to further clarify the original intent of the proposal.

Enclosed you will find a copy of draft 6A of the amendment to Ordinance No. 1165 regarding Tobacco Control. This draft includes the 4 possible amendments we have drafted. Also included with draft 6A is a one-page synopsis of the possible amendments and an explanation on why they are necessary.

If you have questions or concerns please call me at 498-1480 extension 212.

1999 MAY 18 P 3:53
CITY CLERK
CAMBRIDGE, MASSACHUSETTS

FOUR PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 6A)

DRAFT

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

4. page 11, 8.28.120 Section D.
A new number 9
(9) If the Commissioner of Health or his/her designee refused to grant a permit to allow smoking, a restaurant owner may appeal to the City Manager for consideration.
Reason for amendment: No appeal process was in draft.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 6A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

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

City: The City of Cambridge.

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

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

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

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking*.

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

(9) If the Commissioner of Health or his/her designee refuses to grant a permit to allow smoking a restaurant owner may appeal to the City Manager for consideration.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the

Cambridge Public Health Department
Cambridge Health Alliance

1493 Cambridge Street • Cambridge, MA 02139
617.498.1480 • Fax 617.498.1514

Memorandum

To: Cambridge City Council

CC: Robert Healy, City Manager

Margaret Drury, City Clerk

From: Allyson Doyle, Tobacco Control Coordinator

Date: May 18, 1999

Re: Tobacco Control Ordinance

Since the Health and Hospital Meeting of May 4, 1999 the Cambridge Public Health Department has continued to meet with restaurants, city departments, and City Councilors. Through these meeting 4 possible amendments to the original proposal have been drafted. These amendments serve to further clarify the original intent of the proposal.

Enclosed you will find a copy of draft 6A of the amendment to Ordinance No. 1165 regarding Tobacco Control. This draft includes the 4 possible amendments we have drafted. Also included with draft 6A is a one-page synopsis of the possible amendments and an explanation on why they are necessary.

If you have questions or concerns please call me at 498-1480 extension 212.

1999 MAY 18 P 3:53
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

FOUR PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 6A)

DRAFT

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

4. page 11, 8.28.120 Section D.
A new number 9
(9) If the Commissioner of Health or his/her designee refused to grant a permit to allow smoking, a restaurant owner may appeal to the City Manager for consideration.
Reason for amendment: No appeal process was in draft.

ORDINANCE NO. 1165

City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Nine

AN ORDINANCE - draft 6A

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, 1992 election returns demonstrate that more than 60% 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, evidence demonstrates that tobacco in extremely addictive; and

WHEREAS, 18 is the legal age at which cigarettes can be sold to an individual in the Commonwealth; and

WHEREAS, 82% of all smokers begin smoking as teenagers; 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, 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 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 require 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 for Access of Minors to Tobacco Products
8.28.030 Access of Minors to Tobacco Products
8:28.040 Enforcement and Violations
8:28.050 Definitions for Prohibition of Smoking in the Workplace
8:28.060 Prohibition of Smoking in the Workplace
8:28.070 Enforcement and Violations
8:28.080 Definitions for Restrictions on Smoking in Public Places
8:28.090 Restrictions on Smoking in Public Places
8:28.100 Enforcement and Violations
8:28.110 Definitions for Restrictions on Smoking in Restaurants
8:28.120 Restrictions on Smoking in Restaurants
8:28.130 Enforcement and Violations
8.28.140 Implementation

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.

I.

8.28.020. Definitions for Access of Minors to Tobacco Products:

For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this section:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: The City of Cambridge.
Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, local zoning laws and certain articles of the State Sanitary Code.
Minor: Any individual who is under the age of eighteen (18).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
Vending machine: Any automated, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.
Tobacco product: Cigarettes, cigars, rolling papers, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

8.28.030 Access of Minors to Tobacco Products:

A. Sales to minors prohibited:

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

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

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

B. Tobacco sales permit:

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by Inspectional Services.

2. As part of the application process, the applicant will be provided with instructions on compliance with G.L.c.270 section 6 (sales of tobacco to minors and penalties for violation thereof), a copy of this ordinance and compliance with this chapter.

3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.

4. The fee for a tobacco sales permit shall be determined by the Commissioner of Inspectional Services. All such permits shall be renewed annually on July 1.

5. A separate permit is needed for each location.

6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

C. Free distribution. 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 tobacco products, to any person for any promotional or other commercial purposes.

D. Packaging. Sale or distribution of single cigarettes or any tobacco product in any form other than an original factory-wrapped package is prohibited. No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty cigarettes.

E. Self Service Displays. All self-service displays of tobacco products are prohibited. The only

exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

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

1. The vending machine is located within the immediate vicinity, plain view and control of a responsible employee, so that all purchases are observable and controllable as if the tobacco products were sold over the counter;

2. All tobacco products vending machines must display a conspicuous sign stating that it is illegal for minors to purchase cigarettes; and

3. The vending machine is located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

8.28.040. Enforcement and penalties:

A. Noncriminal Disposition. The penalty for each violation of 8.28.030 paragraph A shall be a fine of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense and three hundred dollars ($300) for the third and each subsequent offense within a twenty-four month period. The permit holder is responsible for payment of the fine. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services may suspend a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this chapter.

C. Any permit holder who does not have an appeal pending and does not pay a fine within twenty-one days may be subject to the revocation of the tobacco sales permit granted pursuant to this chapter. The Commissioner of Inspectional Services shall provide notice of the intent to revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Commissioner's decision, and the reasons therefor, in writing. The Commissioner of Inspectional Services, after a hearing, may revoke the tobacco sales permit until the fine is paid. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this ordinance.

D. A violation of any provision of this chapter other than 8.28.030 paragraph A shall be subject to a fine of twenty-five dollars ($25) which may be enforced by Noncriminal Disposition as stated in

8.28.040.section A. Every day in which a person engages in conduct prohibited by this chapter shall constitute a single and separate violation. Any fines imposed under the provisions of this chapter shall enure to the City of Cambridge.

E. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Department.

II.

8.28.050 Definitions for Prohibition of Smoking in Workplaces:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge.
Employee: Any individual person who performs services for an employer.
Employer: An individual person, partnership, association, corporation, trust, or other organized group of individuals, including the City of Cambridge or any agency thereof, which utilizes the services of one (1) or more individual employees.
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Smoking area: An enclosed area in which smoke is vented to the exterior of the building. No employee or member of the public shall have to enter the smoking area.
Ventilation system: A mechanical system to remove tobacco smoke in compliance with State Building Code. Particulate air cleaners or filtration systems are not considered ventilation.
Workplace: Any enclosed area of a structure or portion thereof at which two (2) or more employees perform services for their employer but not including areas where smoking is regulated under the provisions of section I of this ordinance or within the personal residence of the employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.

8.28.060 Prohibition of Smoking in Workplaces.

A. It shall be prohibited for any person to smoke in any workplace in the City of Cambridge except for designated smoking areas as defined in this ordinance.

B. Smoking shall be prohibited in all areas of the workplace, except the employer may designate specific enclosed areas in which employees may smoke, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked. The policy must protect the rights of all employees to clean, breathable air free of environmental

tobacco smoke. No individual shall be refused employment in the city because he or she does not want to breathe environmental tobacco smoke in the workplace.

C. A smoking policy shall be readily available for viewing by said employer's employees and the employer shall provide a copy of such policy to any such employees upon request.

D. Each employer or other person having control of premises upon which smoking is prohibited by this chapter, or the agent or designee of such person, shall conspicuously display upon the premises an appropriate number of "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

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

F. The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

G. Nothing in this chapter shall be construed to require smoking areas.

8.28.070. Prohibition of Smoking in Workplaces Enforcement and Penalties.

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section II. of this chapter may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Public Health Commission.

III

8.28.80 Definitions for Restrictions on Smoking in Public Places:
For the purposes of this ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Cambridge Public Health Department: The entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201.
City: the City of Cambridge
Enclosed Area: A space bounded by walls and under a roof or ceiling.
Health Care Facility: Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions

including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.
Inspectional Services Department: The City of Cambridge Department which is responsible for all laws and related City ordinances which pertain to the MA State Building Code, zoning code and certain articles of the State Sanitary Code and Cambridge municipal code.
Mall: Any enclosed public walkway or hall area which serves to connect retail stores or offices.
Municipal Building: Any building owned, operated or leased by the city including schools. This definition also applies to school grounds.
Person: Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
Private Club: A nonprofit entity with a paid membership.
Public park: Any outdoor playgrounds, fields, reservations and tot-lots, so-called, to which the public is invited and permitted. This includes, but is not limited to any public park adjacent to any public school or city operated building in the city of Cambridge.
Public place: An enclosed indoor area on public or private property where the public is invited or permitted, including but not limited to the following facilities: auditoriums and any rooms or halls when used for a public meeting; public areas of banks and automatic banking lobbies; licensed child care locations; educational facilities; common rooms in publicly-assisted housing; indoor sports areas; lobbies, stairwells, halls, entranceways, and restrooms of inns, hotels, motels, bed and breakfasts, and lodging homes; laundromats ; libraries; museums; theaters and concert halls; public restrooms; waiting rooms; and elevators accessible to the public.
Public transportation vehicle: Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city including indoor platforms by which such means of transportation may be accessed.
Retail Food Store: Any establishment selling food to the public for off premise consumption. "Retail Food Store" shall not include restaurants as defined in 8.28.110.
Retail Store: Any establishment selling goods, articles or personal services to the public, including such places as barbershops, hair salons, nail salons and tanning salons.
Smokeshop: Retail stores where the primary business is the sale of tobacco products;
Smoking: Inhaling, exhaling, burning or carrying any lighted tobacco product in any manner or in any form.
Ventilation system: A mechanical system in compliance with the State Building Code. Particulate air cleaners or filtration systems are not considered a ventilation system.

8.28.090 Restrictions on Smoking in Public Places

A. Smoking Prohibited:

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

B. Election for coverage by private facilities:

The owner, manager, or other person in charge of a building or facility not covered by paragraph

A of Section I. of this regulation may elect to prohibit smoking.

C. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

D. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) Private residences, except when used as a licensed child care facility or health care facility;

(2) University Dormitory rooms occupied by one (1) or more students, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted by the University.

(3) Inn, hotel, motel, bed and breakfast and lodging home rooms that are rented to guests that are designated as smoking rooms;

(4) Inn, hotel and motel conference/meeting rooms, 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;

(5) Private or semiprivate rooms of nursing homes and long term care facilities, occupied by one (1) or more patients, all of whom are smokers, who have requested in writing to be placed in rooms where smoking is permitted;

(6) Smokeshops;

(7) Performers upon the stage, provided that the smoking is part of a theatrical production;

(8) Religious ceremonies where smoking is part of the ritual;

(9) Private clubs, except when used for events open to the general public, during which time the private club is to be considered a public place for the purposes of this chapter;

(10) Indoor spaces while used for properly licensed beano games for charity to which the public is invited;

(11) A smoking area may be designated on each floor of a bowling alley as long as the smoking area does not include bowling lanes, video arcades, lobbies, hallways, stairs or restrooms within the bowling alley;

(12) A smoking area may be designated where psychiatric support groups meet if the Commissioner of Health 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 receive a variance from the Commissioner of Health or his/her designee;

(13) The Middlesex County Jail/House of Corrections or places of incarceration/detention; and

(14) A smoking area may be designated in an area of a public place that is **not open to the public** and is not prohibited by state law, fire regulations or other sections of this ordinance. An enclosed smoking area in which employees may smoke may be allowed, provided, however, that nonsmoking areas of comparable size and capacity and with comparable amenities are available and provided that physical barriers and ventilation systems are used which prevent the infiltration of environmental tobacco smoke into non-smoking areas. Areas designated smoking and non-smoking must be conspicuously marked.

E. Variance procedure:

Any entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a variance to waive any provision of this ordinance. Every request for a variance shall be made in writing

on a form provided by the Commissioner of Health and shall state the specific section(s) for which a variance is sought and the reasons therefore. A non-refundable filing fee of $100.00 shall accompany each application for a variance.

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

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

8.28.100. Violations and Penalties:

A. Any person who violates this chapter shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty hundred dollars ($50) for a second offense and one hundred dollars ($100) for a third or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. As an alternative to initiating criminal proceedings, violations of this Section III of this ordinance may be enforced in the manner provided in MGL chap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall enure to the city of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Health Department and Inspectional Services Department or their designees.

C. Any citizen who desires to register a complaint under this section may initiate enforcement with the Public Health Commission.

IV

8.28.110 Definitions for restrictions on smoking in restaurants

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

City: the City of Cambridge

Defined Area of a Restaurant: An area which is separated from the remainder of the restaurant by temporary structures such as barriers or decorations such as plants or rugs as described in a diagram attached to the *permit to allow smoking*.

Dual Use Restaurant: A restaurant which possesses a common victualer license and alcohol license as approved by the License Commission and in which the nature of the establishment changes at a designated time such as the service of food is incidental and/or certain types of entertainment.

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

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

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

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

alcohol pouring license.

Restaurant bar area: An area of a restaurant that is restricted to people 18 and older where the service of food is incidental to the service of alcohol. This does not prohibit the service of meals in the bar area.

Restaurants where food is incidental to alcohol: A restaurant which possesses a common victualer license and/or an alcohol license as approved by the License Commission prior to 1986 and which is also approved by the License Commission to have food incidental to the alcohol revenue during all hours of operation.

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

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

8.28.120 Restrictions on smoking in restaurants

A. Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any restaurant, except as otherwise provided in paragraph C of this chapter.

B. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Section I. of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

C. Exceptions:

Notwithstanding the provisions of paragraph A of this chapter, smoking may be permitted in the following places and/or circumstances:

(1) The outdoor or sidewalk seating portions of a restaurant provided that such outdoor seats are not enclosed except for the one side which adjoins the restaurant;

(2) Enclosed function rooms that are rented for private functions;

(3) A smoking area may be designated in establishments which have a *permit to allow smoking* from the Cambridge Public Health Department. All permit holders must post appropriate signs provided by the Cambridge Public Health Department. Establishments that are eligible for a *permit to allow smoking* are the following:

(A) Bar areas of restaurants when the bar area is enclosed from the remainder of the restaurant and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(B) Bar areas of restaurants when the bar area is separate from the remainder of the restaurant by a defined area that includes at least six feet of space and the seats are not more than 25% of the total seats and the bar area seating is restricted to eighteen and older;

(C) Restaurants that possesses a common victualer when the entire establishment is restricted to individuals eighteen and older may designate a smoking area of 50%;

(D) Restaurants in which food is incidental to alcohol may designate a smoking area of 50% if seating in the smoking area is restricted to eighteen and older;

(E) Dual Use Restaurants may designate a smoking area of 50% during time periods in which the establishment is restricted to individuals eighteen or older, the service of food is incidental

and/or entertainment is offered.

(F) Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

D. Permit to allow smoking procedure:

(1) It shall be unlawful for any restaurant to permit the smoking of tobacco products on its premises unless that restaurant holds and maintains a valid *permit to allow smoking* from the Commissioner of Health or his/her designee.

(2) Any eligible entity subject to this chapter may apply to the Commissioner of Health or his/her designee for a *permit to allow smoking*. A non-refundable filing fee of $50.00 shall accompany each application for a permit.

(3) Each permit applicant must designate in his/her application the restaurant categories in which he/she is seeking to have his/her restaurant included. Permits will be granted to any applicant for the categories for which a restaurant qualifies. The categories for which a restaurant qualifies shall be clearly designated on the *permit to allow smoking* granted to that restaurant.

(4) A separate permit is required for each place of business.

(5) First-time permits will only be granted to qualified restaurants prior to January 2, 2000. All restaurants that do not have a permit prior to January 2, 2000 must be smokefree as of that date.

(6) If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

(7) Each permit shall be renewed every three years, unless the Commissioner of Health or his/her designee determines that

(a) the restaurant no longer meets the eligibility requirements for the categories in which it has been designated.

(b) the *permit to allow smoking* has been revoked according to the provisions of 8.28.130.D

(8) The Commissioner of Health may promulgate reasonable rules and regulations for the implementation of this chapter.

(9) If the Commissioner of Health or his/her designee refuses to grant a permit to allow smoking a restaurant owner may appeal to the City Manager for consideration.

8.28.130. Violations and Penalties:

A. Any person who violates this chapter by 1) allowing smoking in a nonsmoking area or 2) allowing a minor into an area restricted to eighteen and older shall be subject to a fine in an amount of twenty-five dollars ($25) for a first offense, fifty dollars ($50) for a second offense, one hundred dollars ($100) for a third offense or subsequent offense. Each day a violation occurs will be considered a separate offense.

B. The Commissioner of Health or his/her designee may suspend a *permit to allow smoking* granted pursuant to this ordinance upon determination that a permit holder has committed four (4) violations within thirty-six months, calculated from the date of the first offense. The Commissioner shall provide notice of the intent to suspend a License to permit smoking, which notice shall contain the

C. C. 106

4.

City of Cambridge

In City Council April 5, 1999

The Ordinance Committee held a public hearing on March 24, 1999 beginning at 5:35 p.m. in the Sullivan Chamber for the purpose of considering a proposed amendment to the zoning ordinances to regulate truck traffic by providing a nighttime curfew on use of city streets by through trucks 2.5 tons or more in gross weight **(Attachment A)**.

Present at the hearing were Councillor Henrietta Davis, Chair of the Committee, Councillor Kathleen L. Born, Mayor Francis H. Duehay, Councillor Sheila T. Russell, Councillor Michael A. Sullivan, and City Clerk D. Margaret Drury. Also present were Donald Drisdell, Deputy City Solicitor, Lester Barber, Director of Land Use and Planning for the Community Development Department and Loren Preston, Traffic, Parking and Transportation Department.

Councillor Davis convened the hearing and explained the purpose.

James Adams, 226 Brattle Street, read a statement from Karen Falb, petitioner. **(Attachment B)**. He noted that truck traffic has increased in Cambridge and it has become very disturbing. The petition calls for a citywide ban on through trucks during normal nighttime sleeping hours. Designated truck routes are not the answer.

Councillor Davis then invited public testimony in support of the petition.

Robert Smith, 86 Buckingham Street, spoke in support of the ordinance. He said that he lives at the corner of Concord Avenue. Truck traffic starts early in the morning and goes to late at night.

Mayor Duehay stated that he has to leave to attend the School Committee meeting. He will study the issue very carefully. He lives three houses from Mt. Auburn Street and is very aware of the pernicious effects of truck traffic. It is unfortunate that Cambridge has not been able to deal with this issue. The problem Cambridge has had is that of federal law, which has pre-empted local authority.

Mayor Duehay stated that he would like to find a way to allow Cambridge to regulate truck traffic but he wants to be sure that it would not be a useless exercise because of the legal issues. He said that he would welcome any legal opinions about this issue.

Forrest Selving, 244 Brattle Street, spoke in support of the proposed law. There is an ordinance to limit trucks on Brattle Street but it is not enforced.

Vici Cassana, 87 River Street, stated that she has lived at that address for 22 years. She outlined some of the history of this issue that has brought the city to this point. She started working on the issue in 1993, with the Central Square Committee. They came to realize that a designated truck route was not a solution. Ms. Cassana said that the issue of regulating nighttime truck traffic by zoning has never had a full and fair hearing. She said that there are problems with seeking a state exclusion of nighttime trucks because the Massachusetts Highway Department requires proof of an alternate route before allowing the signage that implements the exclusion. The exciting thing about the use of zoning is that no signs are required. Zoning is an appropriate tool to protect the quality of life.

Councillor Russell asked how the truck drivers would know about the restriction if there were no signs. Ms. Cassana said that they would know when they were stopped. Also, there can be a good publicity effort, including informing trucking companies.

Councillor Sullivan emphasized the need to take action. He stated that he intends to make a motion that the City Council request a legal opinion. Councillor Sullivan stated that the City is being told at the outset that Cambridge will be sued no matter what it does. He is concerned that if Cambridge were sued, all existing truck restrictions would be in danger. He would like a legal analysis of the potential danger to the existing protections and restrictions. He is very concerned about the dangers of fuel trucks driving down residential streets in light of the recent explosion of a fuel truck on the expressway and would like analysis of whether there is something that can be done to protect against this.

Thereupon, Councillor Sullivan moved that the City Council request the City Manager to direct the City Solicitor to provide the City Council with a legal opinion as to the following issues:

1. The potential danger to existing truck restrictions in Cambridge as a result of a lawsuit against Cambridge for this zoning amendment; and

2. What steps Cambridge may lawfully take to prevent the dangers posed by fuel trucks on residential streets, especially in light of Boston regulations which are directing these trucks from the highway to Cambridge streets.

John Moot, 44 Coolidge Hill Road, stated that he is speaking on behalf of the Harvard Square Defense Fund, in support of the proposal. Zoning is to protect the quality of life and this is an issue of the quality of life. The petitioners would welcome other communities instituting similar bans so as to present a united front. It is important to keep cities livable.

Elie Yarden, 143 Pleasant Street, spoke in support of the proposal. He is concerned about Cambridge's failure to use existing resources to address the problem of trucks. He is especially concerned that city administrators have failed to contact other cities and towns. Other cities in other civilized parts of the world have found solutions to these problems. One is the establishment of regional depots. A zoning petition is only a first step. It should be attempted. He pointed out the executive power of the City Council. He noted the goals of the President's Council on Sustainable Communities.

Councillor Davis then invited testimony from the City of Somerville. Tod Fontinella, employee of the City of Somerville, transmitted a letter to the Ordinance Committee from Acting Mayor Roach **(Attachment C)**. Traffic enforcement should not be done through land use law. Traffic management must be done at the regional level.

Councillor Davis asked whether Somerville would like to enact a nighttime ban. Mr. Fontinella stated that there is already a regional response through the Metropolitan Area Regional Study.

Councillor Davis asked about the schedule for completion of the study. Mr. Fontinella said that he believes it will be about ten months. In response to a question from Councillor Russell, he stated that the study started about twelve months ago. A lot of data has been collected.

Councillor Russell asked whether he thought the solution might happen more quickly if all the surrounding communities worked together on such a ban.

Loren Preston, Cambridge Traffic, Parking and Transportation Department, stated that the Traffic Department has cooperated fully with the regional work.

Councillor Davis stated that citizens are understandably frustrated by how long it takes to change. She noted that the Committee has also received a letter from the Town Manager of Watertown **(Attachment D)**.

Councillor Russell moved that we request that the Mayors and City Managers meet with Cambridge to discuss joint efforts on the problem of trucks to try to move faster on a regional solution. The motion passed on a voice vote without objection.

Councillor Born stated that the efforts to put together a truck committee started five years ago, and it was noted that there were regional efforts ongoing at that time. They are very slow, and the perspective of the people working on the issues is mostly that of facilitating regional transportation. It falls to local officials to try to solve the quality of life problems that the trucks bring. Somerville is full of the same 19th century problems that exist in Cambridge.

Riva Poor, 73 Kirkland Street, stated that she has lived in Cambridge for 40 years. She expressed the frustration and powerlessness that individuals feel in trying to solve this problem. Fear of being sued is akin to the fear of bullies experienced as children. She submitted a letter in support of her position (**Attachment E**). Once Cambridge shows it has the courage to fight, other communities will join in.

Brian Pfeiffer, 147 Brattle Street, stated that he has lived there for 25 years. Part of the increased trucking problem is caused by the de-regulation of trucking in recent years. Noise, vibration, pollution and the danger of explosion are all major concerns. The city government has failed its citizens. Other communities have not been contacted on this issue.

Thelma Magaril, 75 Kirkland Street, spoke in support of the petition. She is awakened by trucks in the very early morning.

Louise Phelan, Line Street, stated that she has lived in Cambridge for nine years in various locations and has experienced trucks in all locations. She loves Cambridge but she would like to get a good night's sleep.

Joseph Westlund, 244 Brattle Street, spoke in support of the petition. He is wakened by trucks at 4:00 a.m. everyday. He stated that enforcement could be improved.

Caroline Wornick, 240 Brattle Street, spoke in support of the petition.

Tom Bracken, 89 Irving Street, stated that he hears the noise of trucks on Kirkland Street starting early in the morning. There is nothing new about using zoning to restrict trucks. He read from the statement of purposes in Massachusetts General Laws, Chapter 40A, the state zoning act. The Cambridge Zoning Ordinance clearly provides the authority to use zoning in this way. Furthermore, the Plaistow case decided by the First Circuit, the highest court in this federal jurisdiction, upheld the use of a nighttime zoning restriction on trucks at night. The District Court in Massachusetts upheld a limited ban in Cambridge in the Portland Stoneware case. There is ample authority to uphold zoning relief. With regard to the issue of enforcement, the zoning law is deemed to constitute notice. Cambridge can utilize a "cease and desist" order. We know who the offenders are.

Stash Horowitz, 12 Florence Street, spoke in support of the proposed amendment. In Cambridge there are many examples of the intersection of zoning and traffic control, for example, the IPOP, the PTDM and the parking freeze. Laws such as the environmental protections often come from a history that involves lawsuits against them. He hopes the Law Department is prepared to mount a vigorous defense. Individual truck drivers have a lot of leeway as to when they drive their trucks, so this would not hinder the delivery of goods. Perhaps something can be worked out with the trucking industry.

Hal Becker, 73 Kirkland Street, spoke in support of the petition. Somerville does have a nighttime truck ban that is not enforced. Cambridge police have done better on enforcement. Most of the people here have come for the because they want protections. Sound encroachment is approaching the threshold of pain. The only arguments put forth not to go forward are fear of lawsuits and "good neighbor" arguments by neighboring towns who could pass similar laws.

Robert Travers, 54 Fulkerson Street, stated that he has lived at that address for over sixty years and truck traffic has been a problem since the day he was born. Property owners should get together to sue because of truck damage to their properties.

James Murphy, American Trucking Association (ATA), 600 Roosevelt Avenue, Pawtucket, stated that he thought it would be better for the City of Cambridge to make an effort to reach out to the trucking industry. He believes the proposal violates several (3-4) state and federal regulations. The proposal gives trucks two option. One is to drive on other roads to go around Cambridge and therefore use more fuel and increase the total vehicle trip miles. The other is to wait until 7:00 a.m. and become part of area congestion. The ATA is looking at all of the time and money that will be spent to impact a relatively few trucks. Working together with the industry could actually have a more positive outcome on the truck problem.

Councillor Russell asked what kind of outreach issue can be done. Mr. Murphy stated that this is a regional issue, with regional trucks. Trucks do not have a lot of leeway. The trucking industry can contact five point-carriers (moving their own freight) and for hire-carriers. Several issues mentioned relate to speed and size, not going down routes. In a coordinated effort of state and national trucking associations and the city, we could ask them to use smaller trucks. This has been done in other cities and towns.

Councillor Davis asked Mr. Murphy is there was a way to dissuade nighttime truck traffic on residential street. Councillor Davis requested that Mr. Murphy provide the committee with a list of cities and towns where this cooperation has occurred and any reports about what efforts have been successful. Mr. Murphy stated that he would do so.

Mr. Murphy stated that most cities want fewer trucks which is one reason larger trucks are used. If Cambridge wants smaller trucks used, this can be discussed. Such cooperative efforts could lead to daytime improvements too.

Councillor Russell moved that the City Manager be requested to direct the Traffic Department to set up a meeting with the American Trucking Association and the Massachusetts Motor Transportation Association while the ordinance is being considered and also meet with the officials in the surrounding cities and towns and that the discussions include the issue of an alternative highway route for trucks. The motion passed on a voice vote without objection.

Councillor Davis asked Mr. Preston whether there have been past attempts to work with the trucking industry. He stated that he has met with various associations on other issues and there have been some results.

Riva Poor, 73 Kirkland Street, then related her unsuccessful efforts in contacting trucking companies. She chose Mobil Oil, a responsible company. She was told an alternative route would cost more money, and thus was not possible.

Councillor Russell said that this is a difficult issue, but something must be done to protect the quality of life which is clearly affected by increased truck traffic.

Councillor Davis stated that she believes that Cambridge should work with Representative Capuano on this issue. Obviously, he has concerns about Cambridge not solving the problem in a way that hurts Somerville. She added that there should be no speeding trucks at night and there is more to do in that regard.

Councillor Russell moved that the proposed amendment remain in committee. The motion passed on a voice vote without objection.

The hearing was adjourned at 7:40 p.m.

For the Committee,

Councillor Henrietta Davis
Chair

ATTACHMENT A

TRUCK TRAFFIC ZONING PETITION

1999 JAN 21 A 9:00
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

WHEREAS, the health, welfare, safety and property of citizens living in residential neighborhoods throughout the City of Cambridge are adversely impacted by the noises, vibrations, pollution and hazards caused by large commercial trucks passing through the City, which concerns were expressed by many citizens at a City Council hearing on October 23, 1995 and in written statements and letters submitted to the Council and individual Councillors;

WHEREAS, in November, 1995 the City Manager, pursuant to an Order of the Council, established the City Manager's Truck Traffic Advisory Committee, consisting of eleven Cambridge residents, to work jointly with City staff to address the truck traffic problem and make recommendations to the City Council on measures to mitigate the adverse impacts of trucks throughout Cambridge;

WHEREAS, the Committee members recognize that the following conditions characterize and cause the truck traffic problem in Cambridge and surrounding communities:

- Truck traffic has an adverse impact on the residential quality of life due to noise, vibration, dirt, exhaust fumes, wear and tear on the City's streets and sidewalks and high speeds, causing loss of sleep at night and peace and quiet during the day, structural damage to buildings and personal property in homes, and safety for everyone, including particularly school children.
- The negative impacts of truck traffic reduce property values - especially residential property - which reduces the City's tax base.

- Truck deliveries and pick-ups within the City are a necessary part of the provision of goods and services to the citizens of the City and are important for the economic health and vitality of the City.
- Through truck traffic (i.e. trucks traveling to and from destinations and origins outside the City) has a detrimental effect on Cambridge residents and therefore measures should be taken to ensure that through trucks use State and Interstate highway systems around Cambridge and neighboring communities instead of using local streets.
- The policy of the City of Boston which prohibits trucks carrying hazardous cargo from traveling on the Massachusetts Turnpike under the Prudential Center causes many of these trucks with distant destinations to cross into Cambridge. Many more through trucks with hazardous materials can be expected to use Cambridge streets when the Central Artery Project is completed because the City of Boston has announced that it will prohibit such trucks from the new tunnel, apparently for safety reasons, even though the tunnel is equipped with state-of-the-art fire fighting equipment.

WHEREAS; in order to address the truck traffic problem, three primary objectives need to be satisfied by truck restrictions in the City of Cambridge:

(1) Accept through truck traffic during certain hours of the day to the extent that Cambridge is the most suitable route for the region as a whole;

(2) Protect residential neighborhoods, commercial areas, and institutions from the destructive effects of truck traffic; and

(3) Facilitate access of trucks from origins and to destinations within Cambridge.

WHEREAS; during the deliberations of the Committee two fundamentally different philosophies as to how to respond to the Committee's mission became apparent, resulting in two reports of the Committee being submitted to the City Manager. The authors of Report B (a majority of the citizen appointees to the Committee who support this Petition) believe that the purpose of truck restrictions is to reduce the negative impacts of through truck traffic which will improve the quality of life for all residents without making any neighborhood suffer a disproportionate share of the burden of truck traffic. This philosophy is based on recent Federal court cases which support the authority of municipalities to enact reasonable measures under their zoning authority and police powers to achieve the goal of mitigating the adverse impacts of truck traffic. We believe that such an initiative will provide leadership which other communities in the region can follow;

WHEREAS; an alternative philosophy is reflected in Report A (submitted by a minority of the citizen members) which is based on the belief that the total volume of truck traffic cannot be reduced except by means of a regional strategy, and that any restrictions in one part of the City will simply move vehicles to another part of the City or to other cities. This philosophy regards truck traffic as an inevitable part of urban living, sees little possibility of implementing effective regulations, and anticipates negative responses from neighboring communities to any Cambridge initiatives;

WHEREAS; the City Manager submitted Reports A and B to the City Council, which, in turn, submitted them to the Subcommittee on Traffic and Transportation which has held three hearings on the Reports, with no consensus of the Committee as to what recommendations to make to the Council and no establishment of a time frame in which to report to the Council;

NOW THEREFORE; we the undersigned being more than ten (10) registered voters of the City of Cambridge respectfully petition the Honorable, the City Council of the City of Cambridge to amend the Zoning Ordinance of the City of Cambridge as follows:

To Amend Article 6.000 of the Cambridge Zoning Ordinance as follows:

1. Amend the heading of this Article to read as follows:

"Off-Street Parking and Loading Requirements and Night-time Curfew on Large Commercial Through Trucks."

2. Amend the first sentence of Section 6.11 of Article 6.000 to read as follows:

"It is the intent of this Article 6.000 to reduce traffic congestion, noises, vibrations, fumes and safety hazards caused by large commercial trucks, thereby promoting the safety, health and welfare of the public, by establishing requirements for off street parking and loading and restrictions on the use of City streets during the night-time by large commercial trucks with points of origin and destinations outside the City of Cambridge in order to implement the purposes of The Zoning Act, Section 2A of Chapter 808, and Article 1.000, §1.30 of the Cambridge Zoning Ordinance, including:

- to lessen congestion in the streets
- to conserve health
- to conserve the value of land and buildings
- to prevent pollution of the environment

- to protect residential neighborhoods from incompatible activities, and
- to preserve and increase the amenities of the City."

3. Add a new Section 6.96 as follows:

"6.96. Nighttime Curfew on use of City Streets by Through Trucks.
All trucks 2.5 tons or more in gross weight traveling through Cambridge from origins and to destinations outside the City are prohibited from using any City streets from the hours of 11:00 P.M. to 7:00 A.M. This curfew shall not apply to trucks with points of origin or delivery in the City of Cambridge. Nothing herein shall affect in any way restrictions on trucks currently in effect."

ATTACHMENT B

FROM :

1999.03-23 16:21 #644 P.01/03

245 Battle Street
864-4291
Tuesday March 23, 1999

Fax 354-0079
Dear Henrietta,

Jim Adams, who lives at 224 Battle, has volunteered to read my "speech" suggesting the Wightline curfew Petition. In case there's a problem, Lee is a Copy. We cannot make this Leaning.

Needless to say the Gasoline truck explosion on the Southeast Expressway Sunday is a real reminder of the danger we all face on the front line of Main Street, the triangle Lee at the junction of W. Cedar and Battle has potential for real problems.

Sincerely!

Karen Farb
KAREN FARB

Nighttime Truck Curfew Petition

My name is Karen Falb. I live at 245 Brattle Street have lived in Cambridge since 1967 at four different locations. Certainly trucking has increased during those years. I did sign this Nighttime Truck Curfew Petition and also collected other signatures, which was not difficult in our neighborhood. But as you go from the front line of residences on a major street to those on neighboring streets or streets with less truck traffic, it is more difficult to get people to relate to the petition, which makes me wonder how many city councillors and officials actually live on the front line and so really know the reality of the trucking situation throughout the city. The only truck survey to help show some objective reality about early morning trucking, that I know about, was one conducted by citizens several years ago. My own observation is that certain companies in abutting towns have scheduled runs through the night and that construction companies start their frequent runs on weekdays, even before five in the morning. Anyone in bedrooms on the street side of a residence is woken up periodically through the night by large noisey trucks and is exposed to what I will call the buzz and rumble of trucks from 5 o'clock on. Before we repositioned our bedroom, I was oxygen-deprived from pillows piled on my head to deaden the noise. We have one bedroom which is still fully exposed.

The city needs to be reminded that a resident cannot on his or her own do anything about truck traffic. We cannot stop speeding trucks. We cannot stop trucks carrying dangerous cargoes. We cannot stop trucks which emit exhaust exceeding safe health standards. We cannot stop trucks which create a noise level exceeding allowable legal limits. We cannot prevent vibrations in our houses caused by trucks, especially speeding empty construction trucks on rough street road surfaces. This to me is actually the most invasive of the truck problems. And, of course, we cannot on our own

resurface poor road surfaces to prevent these truck vibrations. There is nothing between a resident and trucks but responsive, responsible city government, which we have not really had on this issue. One way the city could regulate the impact of heavy through trucks is to ban their presence during the normal sleeping hours of the night.

The major reason why I have been comfortable persuading others to sign the petition is that it is for a "city-wide" ban. We ALL have value. There has been too much of a tradition of "listening to the squeaky wheel" where the neighborhood with the most vocal and creative complaints has more value. Most of us directly effected by trucks live on stretches of residential areas zoned ONLY as residential areas, free of commercial and industrial use. Our residential stretch is exactly 2.0 miles long, just short of the width of the city. As the volume of trucking continues to increase, do we have to lose the integrity of our streets, our neighborhoods and city because problems associated with trucks reach a threshold residents finally can't tolerate? Designated truck routes is NOT the answer, just as we have all found that designated smoking areas are NOT the answer. Concentrating the trucking problem is NOT the answer. One would think a city like Cambridge - blessed with so many creative minds and a history of solving difficult urban problems -can come up with solutions to better solve the problems of living with trucks. Here is one solution.

****

TRANSACTION REPORT

FOR: BOCK DAVIS 617 547 0877

RECEIVE		
SENDER	PAGES	NOTE
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ATTACHMENT C

CITY OF SOMERVILLE, MASSACHUSETTS

WILLIAM ROCHE
ACTING MAYOR

March 22, 1999

Henrietta Davis, Chair
Ordinance Committee
City of Cambridge
City Hall, 795 Massachusetts Avenue
Cambridge, Massachusetts 02139

RE: REGULATION OF THROUGH TRUCKS, CITY OF CAMBRIDGE

Dear Ms. Davis:

Last month I sent a communication to the Chair of the Cambridge Planning Board on the issue of through truck management in Cambridge, specifically to amend Section 6 of the Cambridge Zoning Ordinance (enclosed).

As was stated in that letter, I and my Administration oppose the proposed amendment to the Cambridge Zoning Ordinance. Below are key reasons for our position on this issue.

First of all, we believe that the proposed amendment, if it is incorporated with the Zoning ordinance, is inappropriate. Zoning is designed for the regulation of land use, not of traffic circulation on public ways. As such, in a zoning ordinance it is appropriate to require parking spaces commensurate with a particular land use, or even to promulgate standards for traffic circulation on a specific site. A truck regulation would be appropriately placed in the code of general ordinances. It is given that the enforcement of truck traffic regulations is not within the purview of building inspectors, but of other municipal agencies such as the police.

Second, Somerville is opposed to any transportation measures which do not address a problem but merely shift them from one municipality to another. It is widely understood that freight movement and truck circulation between municipalities are regional issues, and thus must be

regulated at the regional level. Federal laws have long given metropolitan planning organizations, rather than state or local governments, responsibility for transportation planning in this country. The current federal transportation act has expanded further the role of freight planning in the regional transportation planning process. Although there is clearly a role for local government in transportation planning, both as part of the regional process and as a provider for services that are clearly local, a nighttime truck curfew goes beyond that scope. The proposed ban is clearly discriminatory against regional truck traffic. The Commonwealth is conducting an ongoing truck study which Cambridge and Somerville are both participating in. At least four other communities - Arlington, Boston, Watertown and Belmont would also be negatively affected by this proposed amendment. In the spirit of regionalism, it would seem to us that an enlightened community such as Cambridge would want to work collectively to solve what are clearly regional problems.

Third, in July 1998 Somerville commented on the two reports issued by Cambridge's traffic advisory committee (see enclosed). Then-Mayor Capuano requested that City Manager Healey or his Administration discuss the outcomes of both reports with the City of Somerville **before** either report was adopted or implemented. No response or discussions have been initiated.

Finally, the proposed amendment to the Zoning Ordinances does not promote a "good neighbor" relationship with any of Cambridge's neighboring communities. The proposed amendment is an example of poor public relations.

As previously stated to the Cambridge Planning Board, the City of Somerville will take whatever measures are necessary to prevent implementation of such a truck policy.

Sincerely,

William Roche

William Roche
Mayor

cc: Anne Johnson, Traffic & Parking Director
James Bretta, OHCD
Todd Fontanella, OHCD
Brandon Wilson, Planning Department
Jeff Levine, Planning Department
Capt. Daniel Matthews, SPD
Joan Langsam, City Solicitor

trukban.sta

CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF THE MAYOR

MICHAEL E. CAPUANO
MAYOR

July 15, 1998

Mr. Robert Healey, City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Mr. Healey:

I have received copies of the "Reports of the City Manager's Truck Traffic Advisory', #A & #B. It seems that if either report is adopted, it will have a negative effect on Somerville. To that end, I strongly recommend that neither report be adopted nor implemented before representatives from the City of Cambridge have discussions with this Administration.

I look forward to hearing from you on this sensitive matter.

Sincerely,

Michael E. Capuano
Mayor

cc: Anne Johnson, Director, Traffic & Parking

SOMERVILLE CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600, Ext. 2100 Fax: 625-3434

CITY OF SOMERVILLE, MASSACHUSETTS

WILLIAM ROCHE
ACTING MAYOR

February 26, 1999

Mr. Paul Dietrich, Chair
Cambridge Planning Board
57 Inman Street
Cambridge, Massachusetts 02139

RE: PROPOSED TRUCK CURFEW, CITY OF CAMBRIDGE

Dear Mr. Dietrich:

This letter is in response to the proposed changes to Section 6 of the Cambridge Zoning Ordinance, specifically to the implementation of a nighttime truck curfew.

In light of the fact that there is an ongoing truck study being conducted by the Commonwealth of Massachusetts through its Central Transportation Planning Staff (which Cambridge has participated in), the City believes that truck curfew regulations such as the one proposed here will work against resolution of traffic issues. If this curfew is adopted and enforced, regional truck traffic will have to seek other routes. This approach doesn't really address the problem - it shifts the problem to Cambridge's neighbors, in particular Somerville, Boston, Watertown and Belmont.

I cannot stress enough that regional truck traffic policies must be developed regionally, not in isolation. I, and the City administration, strongly oppose adoption of these changes to Cambridge's zoning ordinance and will do what ever is necessary to prevent implementation of such a truck policy.

Sincerely,

William M. Roche

William Roche
Mayor

cc: Anne Johnson, Traffic & Parking Director
Todd Fontanella, OHCD

ATTACHMENT D

TOWN OF WATERTOWN

Office of the Town Manager
Michael J. Driscoll

March 16, 1999

Councilor Henrietta Davis, Chair
Committee on Ordinances
Cambridge City Council
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

RE: Truck Curfew Proposal

Dear Councilor Davis,

I am writing to express the Town of Watertown's strong concern regarding the proposed Truck Curfew ordinance.

As an abutting community, Watertown could be negatively impacted by the ordinance. If adopted, the curfew could relocate late evening and early morning truck traffic onto Watertown roadways, particularly Mt. Auburn and Belmont Streets. This would be an unfair and irresponsible move. As urban and metropolitan communities, we all must accept our share of the commerce and transportation burdens associated with the region and its encomony.

Although the proposed truck curfew ordinance was apparently submitted as an amendment to the Cambridge Zoning Ordinance, and the Cambridge Planning Board and City Council appear to be proceeding with the usual process for the adoption of such the amendment under the Zoning Act, G.L.c. 40A, it is our belief that any ordinance which affects traffic in the manner proposed is also subject to the procedures set out in G.L. c. 85, section 2. This provision of the General Laws authorizes the Massachusetts Department of Highways to regulate traffic on "state highways and ways leading thereto and therefrom, and on all main highways between cities and Towns." However, it also provides as follows:

> Except as hereinafter provided, any rule, regulation, order, ordinance or by-law of a city or town hereafter made or promulgated relative to or in connection with the erection or maintenance of signs,. . .on any way within its control . . . shall not take effect until approved in writing by the department [Massachusetts Highway

Department], or be effective after such approval is revoked, if made or promulgated relative to or in connection with the following: . . .(4) any sign excluding heavy commercial vehicles; . . . (7) any rule, regulation, order, ordinance or by-law of a city or town which when made or promulgated would exclude motor vehicle travel on any existing way which connects one city or town with another, unless such rule, regulation, order, ordinance, or by-law was promulgated in compliance with the following: (a) the rule-making body of the city or town initiating such rule, regulation, order, ordinance or by-law gives written notice of such action to the chief executive officer of the abutting city, town or county into which said way extends, and (b) a public hearing is held by the city, town or county initiating such alteration, relocation or discontinuance, public notice of which must be published for each of the two weeks preceding such hearing in a newspaper of general circulation in the abutting city, town or county into which the said way extends, and (c) after concurrence in writing by the chief executive officer of the abutting city or town into which the said way extends or his designee. (Emphasis added.)

Under basic concepts of due process, the administration and enforcement of the proposed curfew will require the posting of signs indicating the conditions of the curfew in order to provide the traveling public with notice of the ordinance. It is, therefore, our belief that the City's consideration and action on this ordinance is also subject to the procedures, and approvals cited above.

The proposed ordinance is illogical and too drastic a measure for the purported problem. I hope and assume that your Honorable Committee will have the proposed ordinance studied for its potential impacts prior to adoption.

Thank you and please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

Michael J. Driscoll
Town Manager

cc: Watertown Planning Board

ATTACHMENT E

TO THE CAMBRIDGE CITY COUNCIL

RE: A ZONING SOLUTION TO THE THROUGH-TRUCK TRAFFIC PROBLEM

3/24/99

Dear City Council,

I'm sure you're aware of the many serious problems that through-trucks cause. Noise, fumes, vibrations, speeding, all ruin our quality of life and depreciate our properties. Noise interferes with our sleep as well as with waking concentration. Fumes foul our air. Vibrations damage our homes. They also damage our roads and the infra-structure beneath. Speeding creates danger for pedestrians, cyclists, and parked cars. And as the recent conflagration on the southeast expressway illustrates, the passage of huge oil tankers - of which we have so very many on our streets - endangers our very lives.

All these problems have become more severe over the past 25 years. More vehicles. Larger vehicles. Our streets, built for the gentler local traffic of the long ago past, now need constant repair. Today's 18 and 22 wheelers chew them right up.

Today many of our streets have become virtual highways and busy highways at that.

We have been asking for redress for more than 25 years now. No redress. Only excess.

I would like some relief within my lifetime. So would most other Cambridge folks.

The night-time zoning we propose has the beauty of virtual immediacy. Within a few months, we can get night-time through-trucks off our streets and onto the highways where they belong. Onto highways that our taxes built for them to use! AND with no deleterious effect to other streets in our town nor in other towns; because, as Tom Bracken points out, if through-trucks can't get onto our streets, they can't pass from our streets onto those of our neighbors.

True, if we stop these trucks from short-cutting through our streets they may have to spend more time and gas money going by the highways. But right now, WE pay for them to short-cut through here (noise, vibrations, etc.). Why should WE pay these costs!? Why shouldn't THEY pay their OWN costs!?

We urge you to allow us the nearly immediate relief that our no-night-time-through-trucks zoning will provide, relief that will benefit our neighboring towns as well as ourselves.

Thank you.

Riva Poor
73 Kirkland St., Cambridge, MA 02138 617-868-4447

MSSR Item "B" VV9 "B"

THREE PROPOSED AMENDMENTS
TO THE TOBACCO CONTROL ORDINANCE AMENDMENT (draft 7A)

1. page 9, 8.28.100
The first sentence of item B currently reads
As an alternative to initiating criminal proceedings, violations of this Section I of this regulation may be enforced in the manner provided in MGL chap 40, sect. 21D.

It should be amended to read:
As an alternative to initiating criminal proceedings, violations of this Section *III* of this *ordinance* may be enforced in the manner provided in MGL chap 40, sect. 21D.

Reason for amendment: Mistake when typing draft amendment.

2. page 11, 8.28.120 Section C. (3) (F)
The item currently reads
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions.

It should be amended to read:
Dual Use Restaurants may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and certain types of live entertainment are offered such as dancing by patrons; live music; comedy, acrobatic, magic or floor shows; dart or pool tournaments; karaoke; and/or dancing exhibitions. Restaurants in which food is incidental to alcohol and have an occupancy of less than 100 as determined by the Cambridge Fire Department may allow smoking during time periods in which the establishment is restricted to individuals eighteen or older and the nature of the establishment changes.

Reason for amendment: The Restaurant Working Group formed at request of some of the City Councillors agreed to allow smoking throughout establishments when they resembled nightclubs/bars. Smoking throughout the establishment is limited to specific hours. There were several reasons for this including the fact that it would be difficult to monitor a 50% smoking section when the nature of the establishment encourages people to mingle and move around an establishment. The original wording did not allow for the possibility of inclusion of five small establishments in which alcohol is incidental to food but are too small to have live entertainment: Guido's, Joey Mac's, Paddy's, Plough & Stars and Pugliese.

3. page 11, 8.28.120 Section D. (6)
The first sentence of item D. 6. currently reads
If the ownership of a restaurant with a permit to allow smoking is transferred to a new person, the right to a permit to allow smoking is also transferred. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

It should be amended to read:
If a restaurant with a permit to allow smoking is sold to a new owner, the new owner has the right to apply for a permit to allow smoking. The new owner must apply for a permit and meet the qualifications in this chapter prior to opening the restaurant.

Reason for amendment: City Solicitor's office advised that the word transfer was the not the correct word for this concept.

C

120 Foster Street
Cambridge, MA 02138
May 16, 1999

The Mayor and City Councillors
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Mayor Duehay and Councillors:

I am unable to attend the Ordinance Committee's May 19th hearing on the latest proposal for dealing with environmental tobacco smoke (ETS) in dining establishments. Hence I am submitting my testimony in writing.

My understanding is that all restaurants without bar areas would be smokefree under this plan but that bar areas could have smoking even without a real separation from the dining area. I wholeheartedly favor the prohibition of smoking in dining areas because it is an advancement from where we are today. However, allowing smoking in bar areas lacking adequate physical separation from dining areas and without strong ventilation pretty much ensures that adjoining dining areas will become smoky, thereby negating their supposed smokefree status.

I would like to see a time frame added to this proposal sc that smoking in lounge areas would have a definite life span, say one year, after which time there would be no smoking at all.

ETS is unpleasant, dirty, and, most importantly, carcinogenic. It is bad for customers as well as for employees. It is time Cambridge became more progressive on this matter like other nearby communities. Several years ago I sat in your Chamber while the sitting Councillors discussed and passed a ban on using styrofoam cups in City Hall, to protect the environment. I wish you would demonstrate as great concern for the well being of the populace. Please pass this proposal and then move quickly to rid lounges and adjacent dining areas of ETS.

Sincerely,

Elizabeth Van Ranst

Elizabeth Van Ranst

PUBLIC NOTICE

The Ordinance Committee of the Cambridge City Council will conduct a public hearing on Wednesday, May 19, 1999 at 5:30 P. M. in the Sullivan Chamber, 795 Massachusetts Avenue, Cambridge, MA.

The purpose of this hearing is to discuss proposed changes to Chapter 8.28 of the Cambridge Municipal Code regulating youth access to tobacco and smoking in workplaces and public places.

For the Committee,

Councillor Henrietta Davis,
Chair

Where There's Smoke, There's Disease:

Reducing the Effects of Environmental Tobacco Smoke in Massachusetts



The Medical Foundation

Where There's Smoke, There's Disease:

Reducing the Effects of Environmental Tobacco Smoke in Massachusetts

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

PREFACE 3

INTRODUCTION 6

PART 1: SUMMARY OF THE SCIENTIFIC EVIDENCE

1. BACKGROUND 9
   - What is ETS? 9
   - How is ETS Exposure Studied? 9
   - Measurement Methods 10
   - Weight of Evidence 10
   - Prevalence of Exposure 11
   - Exposure in the Workplace 13
   - Massachusetts: Decreasing Smoking Rates 13
   - Developments on the National Level 14

2. EFFECTS OF ETS EXPOSURE THROUGHOUT THE LIFE CYCLE 16
   - Infants and Newborns: Developmental effects 16
     - Low Birthweight 16
     - Sudden Infant Death Syndrome (SIDS) 16
   - Children: Respiratory effects 17
     - Decreased Lung Development 18
     - Lower Respiratory Infections 18
     - Asthma Exacerbation 18
     - Asthma Induction 19
     - Middle Ear Infections 20
   - Adults: Respiratory effects 20
     - Asthma Exacerbation 20
     - Chronic Obstructive Pulmonary Disease 20
     - Coronary Heart Disease 21
     - Cancer 22

3. SUMMARY 22

PART 2: WHAT CAN BE DONE TO REDUCE INVOLUNTARY EXPOSURE TO ETS?

1. BACKGROUND 25
   - Local Efforts 27
   - State Laws and Regulations 27
   - Federal Laws 30
   - Where Are People Still Exposed? 31
   - What Can be Done to Reduce or Eliminate Involuntary Exposure? 32

2. RECOMMENDATIONS OF THE TASK FORCE 32
   - Rationale, Principles and Guidelines 34
   - Recommendations 34
     - Local Efforts 39
     - State Policy 39

3. SUMMARY 40

The recommendations found in this report are those of the ETS Task Force and do not reflect the opinions of the Massachusetts Department of Public Health.

Where There's Smoke, There's Disease:

Reducing the Effects of Environmental Tobacco Smoke in Massachusetts

EXECUTIVE SUMMARY

It has long been understood that active smoking increases an individual's risk for a variety of diseases including cancer, chronic obstructive pulmonary disease, and heart disease. More recent studies now show that the effects of smoking are not limited to individuals who smoke, but also extend to those who breathe the smoke released into the air from burning cigars and cigarettes. Nonsmokers exposed to environmental tobacco smoke (ETS) inhale many of the same toxic compounds as active smokers. Very often, people are exposed to ETS involuntarily.

Recent estimates suggest that ETS exposure in Massachusetts results in between 900 and 1,500 deaths annually, several hundred cases of low birth weight, 200 to 300 cases of hospitalization for bronchitis, several hundred new cases of asthma or increased severity, and tens of thousands of physician visits for middle ear infections and related disorders.

The Task Force on ETS has reviewed the scientific evidence on the adverse effects of ETS and has reached the following conclusions:

1. There is little disagreement about the fact that ETS adversely affects human health. Disagreement, where it exists, centers on how bad the adverse effects may be, not on whether or not they exist.
2. There is consistent credible evidence that ETS exposure is associated with a wide range of adverse health effects including asthma, emphysema, middle ear infections, heart disease, and lung cancer. The effects of ETS are not limited to the respiratory system.
3. ETS exposure has cumulative effects over time—those exposed over a long period of time are at a higher risk than those exposed for a shorter duration.
4. The effects of ETS affect multiple organs and organ systems. Therefore, studies that have focused on single disease entities rather than on multiple organ systems, have tended to underestimate adverse health consequences of ETS.
5. Children are especially vulnerable to the adverse health effects of ETS exposure because they are still developing physiologically and they cannot advocate for smokefree environments for themselves.

All of these findings suggest that it is incumbent on the Commonwealth to act on behalf of individuals who are involuntarily exposed to ETS to protect them from its toxic effects.

Further, public opinion in Massachusetts favors restrictions to reduce ETS and this opinion is growing stronger. In a 1996 survey, 60.5% of nonsmoking and smoking adults reported favoring formal policies to limit ETS, up from 58.2% in 1995.

To that end, the Task Force recommends the active pursuit of the following:

At the local level:

1. Pursue intensive sustained efforts to regulate involuntary exposure to ETS.
2. Commit resources to strengthen the enforcement of regulations already in place at the state and local level.
3. Extend protections for state and municipal workers to include protection from involuntary exposure to ETS in state or municipal vehicles.
4. Encourage smokers to quit smoking if, for no other reason, than to protect other family members from incidental exposure to ETS. While the Task Force is adamantly opposed to regulating private behavior in the home, it feels strongly that the Commonwealth has an obligation to encourage its citizens to alter behaviors that may have adverse consequences for them and others.

At the state level:

1. Explore the use of the State Sanitary Code's provisions regulating food establishments as a vehicle to address ETS exposure of workers and patrons.
2. Ensure that protections from ETS are extended to those under state care.
3. Consider regulations to adjust health, workman's compensation, and fire insurance rates paid by businesses that do not protect their workers from ETS to reflect the added expenses associated with ETS exposure.

ETS exposure is a major source of illness, disability, and premature death in Massachusetts. It is an exposure that is easy to identify and control through education and the implementation of simple policy initiatives. While Massachusetts faces many intractable problems in protecting and promoting the health of its citizens, ETS should not be one of them.

PREFACE

Massachusetts has successfully implemented innovative programs to reduce harm caused by passive and active smoking. Perhaps most notable is Question 1, a ballot petition approved by Massachusetts voters in November, 1992. Question 1 increased the tax on each pack of cigarettes from 26 to 51 cents.[i] Proceeds have helped establish the Massachusetts Tobacco Control Program which has been responsible for a wide range of control efforts:

- A statewide mass-media anti-smoking campaign.
- Funding and technical support for local boards of health and youth programs to promote policies that reduce public exposure to ETS and restrict youth access to cigarettes.
- Support to health education programs, primary care providers, and other services to help current smokers quit and prevent nonsmokers from starting.

Since the establishment of the Massachusetts tobacco control program, the number of cigarettes purchased in Massachusetts has declined substantially. The number of adult cigarette purchases declined 19.7% from 1992 to 1996 (per capita consumption fell from 117 to 94 packs) compared to a 6.4% decline during 1990-1992.

In May of 1998, The Medical Foundation was asked by the Massachusetts Department of Public Health to conduct a critical review of the scientific literature on the effects of ETS. This report presents the results of that effort. It has been developed for health professionals, elected officials, and civic and business leaders concerned about involuntary exposure to ETS.

During the Summer of 1998, The Medical Foundation convened a Task Force and a panel of expert reviewers, composed of scientists and policy experts familiar with the ETS literature and existing regulations (see attached list). The Task Force and its expert reviewers have guided the content and focus of this report throughout its development and have ensured an accurate presentation of the facts. The Task Force has also developed recommendations to reduce involuntary exposure to ETS in Massachusetts. In doing so, the Task Force indicated areas in which involuntary ETS exposure continues to pose a health risk to Massachusetts citizens and considered the efficacy of ETS control measures already in place.

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[i] Harris JE. Connolly GN. Brooks D. Davis B. Cigarette smoking before and after an excise tax increase and an anti-smoking campaign - Massachusetts, 1990-1996, MMWR 1996; 45: 966-970.

Numerous reviews have been released exploring the nature and extent of adverse health effects associated with the exposure to ETS. Four of the most exhaustive are reports by the U.S. Surgeon General (1986),[i] the National Research Council (1986),[ii] the United States Environmental Protection Agency (1992),[iii] and the California Environmental Protection Agency (1997).[iv] Each of these reports was the product of extensive literature reviews to determine the extent of the relationship between ETS exposure and adverse health effects. This report summarizes these reports and highlights more recent studies as appropriate. Rather than reproduce the work of these distinguished groups, the Task Force has attempted to address what is significant about ETS exposure in terms of the impact on citizens of the Commonwealth and implications for those who make policy.

Part 1 of this report provides a background of what ETS is and how it is studied and summarizes the scientific evidence linking ETS to a variety of health effects. Part 2 provides a brief synopsis of the measures which are already in place to reduce involuntary exposure in Massachusetts, indicates locations where citizens continue to be involuntarily exposed, and makes policy recommendations to further reduce levels of tobacco smoke in the environment.

The Committee wishes to express its appreciation for the work of Tony Palomba of The Medical Foundation for his assistance in the execution of this complex project. We especially want to thank Joanne Barker for her skill as a writer and editor of the final document.

December 1998

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[i] U.S. Department of Health and Human Services. (U.S. DHHS 1986) *The Health Consequences of Involuntary Smoking. Report of the Surgeon General.* DHHS Pub No (PHS) 87-8398. Public Health Service, Office of the Assistant Secretary of Health, Office of Smoking and Health.

[ii] National Research Council. (NRC, 1986) *Environmental Tobacco Smoke: Measuring Exposures and Assessing Health Effects.* Washington, DC: National Academy Press.

[iii] U.S. Environmental Protection Agency. (U.S. EPA, 1992) *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders.* United States Environmental Protection Agency. Office of Research and Development. Washington, DC.

[iv] California Environmental Protection Agency. (CA EPA 1997) *Health Effects of Exposure to Environmental Tobacco Smoke. Final Report.* Berkeley California: California Environmental Protection Agency. Office of Environmental Health Hazard Assessment.

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INTRODUCTION

Since 1964, when the first Report of the Surgeon General established the adverse health effects of cigarette smoking,[1] scientific evidence has accumulated linking smoking to a wide range of diseases including a variety of cancers, chronic obstructive pulmonary disease, and cardiovascular disease. Infants of women who smoke during pregnancy are at an increased risk of low birthweight and/or death, both before and after birth.

More recent studies now show that the effects of smoking are not limited to the individuals who smoke, but also extend to those who breathe the smoke released into the air from burning tobacco products in enclosed spaces. Nonsmokers who are exposed to ETS inhale many of the same toxic compounds as active smokers. Very often, unlike those who actively decide to smoke, people are exposed to ETS involuntarily.

How Does ETS Exposure Impact Human Health?

Present evidence suggests that exposure to ETS increases the incidence of the following conditions:

- Low birthweight among infants born to women exposed to ETS during pregnancy
- Sudden infant death syndrome (SIDS)
- Acute lower respiratory tract infections in children younger than 18 months
- Exacerbation of asthma in children
- Decreased lung development in children
- Middle ear infections in children
- Respiratory symptoms and chronic obstructive pulmonary disease in adults
- Fatal and nonfatal heart disease
- Lung cancer

In addition to the outcomes listed above, ETS is suspected to increase the risk of several additional disorders, however, the evidence currently available is not extensive enough to prove a causal association (a brief explanation of the epidemiological methods used to investigate ETS' effects in humans is provided in Part 1 of this paper). This report focuses on effects for which existing evidence adequately suggests a causal relationship.

Continuous exposure to ETS throughout the life of an individual appears to take its toll; it is probable that lifetime exposure results in adverse outcomes on

multiple organ systems and predisposes the individual to additional illness. Overall, young children whose organ systems are in the process of developing are most susceptible to the respiratory effects of ETS. Adults and children with certain disorders including asthma, recurrent bronchitis, emphysema, and heart disease should not be exposed to ETS as it can exacerbate underlying conditions. Senior citizens, already at an increased risk of pneumonia, heart disease, and lung disease, face additional risk when exposed to ETS.

PART 1: SUMMARY OF THE SCIENTIFIC EVIDENCE

1. BACKGROUND

What is ETS?

ETS is a complex mixture of more than 4,000 compounds generated during the burning of tobacco products. The smoke from a smoldering cigarette between puffs is called sidestream smoke (SS) and is the principal contributor to ETS. Mainstream smoke (MS) is the smoke exhaled by the smoker.[2]

Although the same toxic compounds present in mainstream smoke are also in sidestream smoke, they are emitted in different amounts because of the different combustion conditions. Much less oxygen is present when SS is formed producing a higher concentration of many chemicals than in MS. For example, the ratio of benzene (an organic carcinogen) in SS compared to the amount in MS is approximately ten to one. ETS contains more than 40 compounds that have been identified as known or probable carcinogens, substances that cause cancer. Some carcinogens are present in SS at ratios of 30-1 to 100-1 compared to MS.[3,4] The following is a sample of some of the chemicals found in ETS and their effects:

Chemicals found in ETS	Effects
Acrolein, crotonaldehyde, and hydrogen cyanide	Interfere with the lungs' ability to expel foreign particles such as those found in smoke.
Ammonia, formaldehyde, and sulfur dioxide	Can make it even harder for people with existing respiratory disorders such as asthma, cystic fibrosis, or emphysema to breathe.
Carbon monoxide, carbon disulfide, lead, nicotine, cadmium, and toluene	Have a toxic effect on fetal development.
Benzene, formaldehyde, and hydrazine	Known or probable human carcinogens (3 of more than 40).
Arsenic and chromium	Metals known to be carcinogenic to humans following inhalation.
Polycyclic aromatic hydrocarbons, including benz[a]pyrene and dibenz[a]anthracene	Carcinogens created by the burning of tobacco.[5, 6, 7, 8]

How is ETS Exposure Studied?

The effects of ETS can and have been studied in terms of their impact at the molecular, cellular, and organ system levels. Furthermore, studies have also looked at the impact of ETS on genetic material. However, much of the attention has focused on the impacts on a population-wide basis through the use of epidemiological studies. While previous reviews have included studies of the impact of ETS at the molecular and cellular levels, the Task Force limited its review predominantly to studies conducted in human populations in community settings, i.e., epidemiological literature.

Epidemiological studies generally compare two groups, one group that is exposed (i.e., to ETS) and a group that is not exposed. The occurrence of a particular outcome or disease is then measured in each group. If a number of studies show that disease occurs more frequently in the exposed group compared to the nonexposed group, it is possible to infer that the exposure is somehow associated with the outcome. Conversely, if the outcome is observed less frequently in the exposed group, investigators may conclude that the exposure has a protective effect. For example, a lower incidence of heart disease would be expected in a group of individuals who eat a low (vs. a high) cholesterol diet.

The existence of a cause-effect relationship can only be reasonably assumed if numerous studies show similar results. Further, the studies must adhere to rigorous standards and eliminate the possibility that the results are due to chance or systematic defects in the design and execution of the study itself. If a study produces results on the basis of chance, subsequent studies will probably not achieve the same results.[9]

Because there is widespread exposure to ETS and it is difficult to find a truly unexposed group in the general population, epidemiological studies attempt to compare individuals with higher ETS exposure to those with lower exposures. For example, a number of studies compare women who have never smoked and are married to smokers with comparable women married to nonsmokers.[10]

Measurement Methods

A variety of methods are used to measure ETS exposure. Because a number of ETS-related health disorders develop over a period of decades—chronic obstructive pulmonary disease, cancer, and coronary heart disease—it is important to determine how long study subjects have been exposed to ETS and to what extent over the course of their lives. Questionnaires can determine subjects' long-term exposure; however, questionnaires are dependent on the accurate recollections of the participants. This tends to reduce a study's ability to

accurately measure relationships between purely passive exposure and health effects.

Measurements of indoor concentrations of ETS, personal monitors, and biomarkers of ETS can gauge short-term exposure, however, these too have limitations. Logistically, these methods are too expensive to use over a number of years or decades. A substance commonly measured in the blood, urine, or saliva is cotinine, a metabolite of nicotine. While its presence can confirm that nicotine has been absorbed into the system, it does not definitively indicate that other components of ETS have been absorbed. Many of the newer studies use multiple sources of information and screening to increase measurement accuracy.[11]

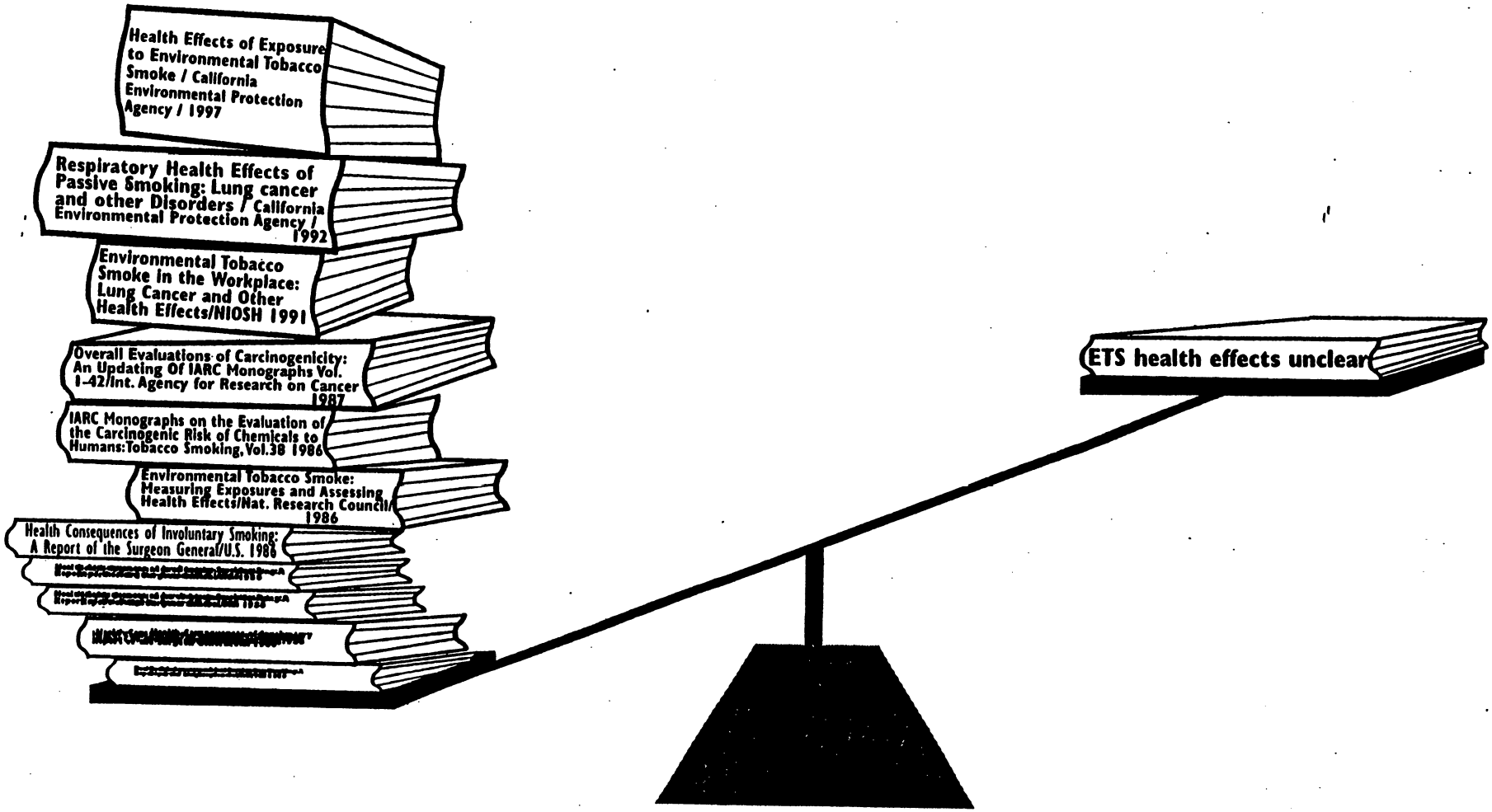
Another concern in conducting scientific studies of ETS exposure is the presence of hidden factors that may have contributed to the development of disease. For example, as a group, people who eat a high fat diet may smoke more, have lower socioeconomic status, and consume more alcohol than people who eat a low fat diet. High quality studies can control for these factors, allowing researchers to determine the existence of an independent relationship between fat and various adverse health effects. Studies with this ability to control for these types of hidden factors have been given more weight in epidemiological literature reviews.[12]

Weight of the Evidence

While the nature of scientific studies, particularly epidemiological studies, almost always precludes drawing definitive conclusions of cause and effect, *the weight of evidence on ETS points overwhelmingly in one direction—people exposed to ETS have higher rates of disease.* If these findings were simply a matter of chance, some studies would show ETS as having beneficial health effects, for example, fewer cases of asthma among exposed groups. This has not been the case. Despite some disparity in the extent of the effects measured in studies of ETS, the weight of the overall evidence leaves little room for doubt that ETS exposure increases the incidence of several diseases.

A limited number of reviews of the literature on ETS have concluded that exposure does not impair health. An investigation of this apparent disparity was reported recently in the *Journal of the American Medical Association.*[13] The investigators found only one factor to be a predictor of a review article's conclusion that passive smoking is not harmful to health: the author's affiliation with the tobacco industry. Affiliation with the tobacco industry was defined as an author's known receipt of funding from or participation in events sponsored by the tobacco industry. Of 106 review articles, 39 (37%) concluded that passive smoking is not harmful to health. Of these, 29 (74%) were written by authors

Weight of Evidence



Demonstrates that ETS has adverse effects on health

affiliated with the tobacco industry.[14] In general, studies that fail to find an association between ETS exposure and adverse health outcomes tend not to have been well designed and/or have not controlled for confounding factors.

Prevalence of Exposure

Time spent in both the home and the workplace contribute significantly to ETS exposure. In Massachusetts, between 1993 and 1996, the average number of hours people reported being exposed to ETS in a week at work declined (from 4.6 to 2.3) while the average number of hours of exposure at home increased (from 4.5 to 5.5).[15] According to the Centers for Disease Control and Prevention, nine out of ten nonsmoking Americans are exposed to ETS.[16] The groups with the highest exposures to ETS were reported to be:

- Children
- Non-Hispanic blacks
- Males

Forty-three percent of children in the U.S. ages two months to 11 years old live in a home with at least one smoker and 37% of adult nonsmokers live in a home with a smoker or report exposure to ETS in the workplace.[17]

Exposure in the Workplace

A measurement of ETS taken in 25 worksites around Massachusetts showed that workplaces that ban smoking have significantly lowered their levels of ETS compared to workplaces with no restrictions. Workplaces that limit smoking to separate enclosed areas reduced ETS levels somewhat but not as much as complete bans.[18]

The Occupational Safety and Health Administration (OSHA) has established levels of cancer risk. By OSHA standards, a significant risk is classified as the risk that one out of 1,000 people will develop cancer.[19] Average levels of ETS measured in workplaces that allow smoking exceeded these established levels as a significant cancer risk. In order to protect workers from hazardous substances found in ETS, the National Institute of Occupational Safety and Health (NIOSH), recommended in 1991 that workplaces eliminate ETS from the air workers breathe using a combination of smoking bans, smoking cessation services, and incentives/disincentives to discourage smoking.[20]

Massachusetts: Decreasing Smoking Rates

In Massachusetts, 21.7% of adults reported smoking in 1995. This placed the Commonwealth slightly below the national average of 22.4% in a range of 13.2-27.8%.[21] Active smoking in Massachusetts continues to decline; by 1997, the percent of self-reported smoking adults dropped to 20.6%.[22] Smoking rates decline with increasing age and higher education levels (Tables 1 and 2).

Table 1. Percent of adult smokers by age

	18-24 years old	65 or older
% who smoke	33.0%	10.8%

Table 2. Percent of adult smokers by number of years of education

	less than 12 years	16 or more years
% who smoke	30.3%	12.4%

Within racial/ethnic groups, Hispanic adults report the highest smoking rates, while African American adults report the lowest (Table 3).[23]

Table 3. Percent of adult smokers within racial/ethnic groups

	Hispanic	White	African American
% who smoke	30.1%	20.9%	16.1%

Developments on the National Level

Recent developments on the national level have, at least temporarily, raised questions on the EPA's classification of ETS as a Group A (known human) carcinogen and the FDA's authority to regulate tobacco products.

Although scientific validity should not normally fall under judicial review, two Federal judges have recently ruled on the EPA's 1992 report on ETS.[24] On July 17, 1998, Judge Osteen of the U.S. Federal District Court in North Carolina vacated the EPA's 1992 finding of ETS as a Group A (known human) carcinogen. Soon afterwards, on August 3, 1998, Judge Mishler of the U.S. Federal District Court in the Eastern District of New York ruled that the classification of ETS as a carcinogen is beyond dispute.[25] Neither court's decision questions the EPA's authority to research and classify toxic substances such as benzene, chromium, or

arsenic as Group A (known human) carcinogens. Each of these components and many others are found in ETS.

On August 14, 1998, a three-judge panel of the U.S. Court of Appeals for the Fourth Circuit brought into question the FDA's jurisdiction in regulating tobacco products. The decision has been stayed pending appeal.

Judicial rulings aside, numerous scientific studies and reviews confirm the EPA's 1992 classification of ETS as a carcinogen, including reports by the Surgeon General (1986), National Research Council (1986), and the California EPA (1997). The evidence from multiple other sources reveals that ETS is a harmful substance which leads to increased rates of cancer remains strong. Further, the effects on respiratory and cardiac health have not been disputed, nor has the significance of ETS exposure on children's health.

2. The Lifetime Effects of ETS Exposure

The majority of scientific data and reviews of ETS literature describe the health effects of ETS exposure in terms of discrete, individual diseases. Scientific research generally studies single outcomes; therefore, relationships among conditions or the fact that individuals may suffer from multiple effects remains largely unaddressed. However, it is probable that many individuals exposed to ETS over their lifetimes experience multiple adverse health outcomes, many of which predispose them to additional effects. For example, young children exposed to ETS develop respiratory infections such as pneumonia and bronchitis more often than nonexposed children; multiple respiratory infections make children more vulnerable to asthma and, ultimately, more likely to develop chronic obstructive pulmonary disease (COPD) in adulthood.

As people age, the effects of exposure accumulate. People with a lifetime of exposure to ETS are at far greater risk for ischemic heart disease and heart failure, pneumonia, emphysema, and cancer than those with less extensive exposure.

As a consequence, the ETS Task Force has adopted a lifetime approach in summarizing the scientific data on ETS. Beginning with effects on the developing fetus and very young infant, this report discusses important health effects of exposure in childhood and later adult conditions affecting adults including heart disease, COPD, and cancer.

Newborns and Infants: Developmental Effects

Epidemiological evidence indicates that children born to mothers who smoke during pregnancy are more often born premature or at a low birthweight as compared to children born to mothers who don't smoke. Low birthweight increases the risk of multiple complications including sudden infant death syndrome (SIDS). Further, infants exposed to ETS in the home more often die of SIDS.[26]

Low Birthweight

Low birthweight describes babies born underweight or less than 5 pounds 8 ounces (2,500 grams). Low birthweight occurs when a fetus does not grow appropriately in the womb and is born small for gestational age or is born prematurely.[27] Low birthweight increases the chance a child will die during infancy; places infants at greater risk of respiratory illness, heart problems, liver dysfunction and anemia; and increases the likelihood of physical deformity and mental disability.[28] Low birthweight affects 6-7% of the births in the United States.

Infants born to women who smoke during pregnancy typically weigh 150-200 grams less at birth and are twice as likely to be of low birthweight than infants born to nonsmokers.[29] Information continues to accumulate regarding the association between ETS exposure and birth outcomes. A mother's ETS exposure during pregnancy appears to have an effect that is similar, but smaller in magnitude, than active smoking. Epidemiological evidence suggests that as a group, nonsmoking women exposed to ETS during pregnancy give birth to infants weighing 25 to 50 grams less than infants born to nonsmoking mothers who are not exposed to ETS.[30] A recent study showed a 140% increase in the number of infants who were small for gestational age born to nonsmoking women exposed to ETS during pregnancy compared to nonsmoking women not exposed to ETS, even when other factors such as alcohol consumption were taken into account.[31]

Even though ETS exposure seems to reduce birthweight to a small degree, from a public health standpoint, this is a detrimental effect. Low birthweight places infants with other health problems at higher risk for additional adverse outcomes.[32] By increasing the number of children born at low birthweight, ETS has a major impact on the population as a whole.

- Each year, an estimated 9,700 to 18,600 cases of low birthweight are associated with ETS exposure.[33]
- In Massachusetts, 230 to 420 estimated cases of low birthweight annually are associated with ETS exposure.[34]

Sudden Infant Death Syndrome (SIDS)

SIDS is the sudden and unexplained death of an infant who is less than one year old. Thus far, it is not clear whether infants are at an increased risk of SIDS if their mothers are exposed to ETS during pregnancy. However, infants born at a low birthweight are more likely to die of SIDS than infants born at normal weight.

Infants exposed to ETS by a mother who smokes during pregnancy (in utero) or following birth in the home are more likely to die of SIDS. Infants exposed to ETS both in utero and following birth have a 200% greater risk of SIDS and infants exposed only after birth a 100% greater risk than infants not exposed at all.[35, 36]

It has been estimated that 50-58% of SIDS cases in the U.S. may be attributed to ETS exposure.[37] However, the 1992 recommendation by the American Academy of Pediatrics that healthy children be positioned on their backs for sleep has contributed to a decline of 20-30%in the number of SIDS deaths since 1992.[38, 39] Therefore, this number may need to be reconsidered.

Each year, an estimated 1,900 to 2,700 deaths nationwide and 20 deaths from SIDS in Massachusetts are attributable to ETS exposure.[40]

Children: Respiratory Health Effects

Of all the health consequences associated with ETS, respiratory health appears to be impacted most profoundly, with children less than 18 months old the most vulnerable group.

Young children exposed to ETS become ill with lower respiratory infections (LRIs) more often than children who are not exposed. Further, growing up in medium and highly polluted areas combined with ETS exposure seems to contribute to more frequent respiratory disorders in children.[41] Exposure to ETS is associated with a variety of childhood respiratory disorders:

- Decreased lung development
- Lower respiratory infections (pneumonia, bronchitis) in very young children
- Asthma exacerbation
- Middle ear infections[42, 43, 44, 45]

Decreased Lung Development

Scientific evidence has accumulated slowly regarding the impact and significance of ETS exposure on lung development in children. Maternal smoking during pregnancy and ETS exposure during the first 18 months of life appears to result in reduced lung function in infants, which may increase the occurrence and persistence of respiratory illnesses later in childhood.[46] Increased susceptibility to respiratory infection or delayed developmental effects following exposure to maternal smoking before birth are thought to be responsible for the decrease in lung function found in children exposed to ETS.[47]

Decreased lung function related to passive smoking may persist into adulthood.[48] Although the absolute magnitude of the difference in lung function between exposed and nonexposed children appears to be small, some children's lungs may be more affected than others'. Even these small differences might be important for children who become active smokers as adults.[49]

Lower Respiratory Infections

LRIs include bronchitis and pneumonia. LRIs are one of the top reasons for preventable hospitalizations of children in Massachusetts.[50] It appears that children exposed to higher levels of ETS experience more respiratory illness than children who are not exposed. Children who attend day care appear to be less

susceptible to LRIs, possibly because day care provides time away from home for children whose parents smoke. Conversely, low birthweight makes infants more susceptible to ETS-related LRIs.[51] Children exposed to ETS experience 150-200% more acute lower respiratory disease than children who are not exposed.[52, 53, 54]

- In children under 18 months old, an estimated 150,000 to 300,000 cases of lower respiratory infection nationwide and 3,400 to 6,900 cases in Massachusetts are attributable to exposure to ETS each year.[55]
- Very young children who are exposed to tobacco smoke are hospitalized for severe bronchitis or pneumonia 20 to 40% more often than children not exposed.[56] Each year, an estimated 7,500-15,000 hospitalizations nationwide and 170 to 350 hospitalizations in Massachusetts are attributable to ETS.[57]

LRIs can have lifetime significance. Acute respiratory illnesses during childhood can have long-term effects on lung growth and development, and may increase the susceptibility of the lungs to the development of chronic obstructive lung disease in adulthood.[58]

Asthma Exacerbation

Asthma is a major chronic condition of childhood and accounted for approximately $6.2 billion in health care expenditures nationwide in 1991.[59] According to estimates of the National Center for Health Statistics for 1994, 98,382 children in Massachusetts had asthma.[i] In 1996, asthma led to 7,368 preventable hospitalizations among Massachusetts children between 0-17 years old.[60] African-Americans and urban Hispanics of Puerto Rican ancestry seem to have higher rates of asthma and more severe symptoms than other racial groups.[61]

Asthmatic children exposed to maternal tobacco smoke experience more prevalent airway inflammation, visit emergency rooms for asthma attacks more frequently, and need more medication to treat asthmatic episodes.[62] Repeated LRIs increase the risk that a child will develop asthma.[63]

An estimated 200,000-1,000,000 children with asthma nationwide and 9,300-23,000 children in Massachusetts have worse and more frequent attacks each year from exposure to ETS.[64]

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[i] *Asthma* is a chronic respiratory condition in which the airways become inflamed or constricted and partially restrict air as it travels into and out of the lungs. Physical stimuli, including mold, dust mites, cockroaches, and ETS can trigger airway constriction. Typical symptoms of asthma include cough, chest tightness, difficulty breathing, and wheezing.

Asthma Induction

The relationship between ETS exposure and new cases of asthma in children is not entirely clear, although evidence supporting an association continues to grow in strength. Studies thus far have demonstrated children with some or all of the following risk factors are more likely to have asthma than children with fewer or none of these factors: a parent with asthma, low income, a mother who smoked while pregnant, and exposure to ETS.[65]

Studies to date have observed a 40% higher incidence of asthma in children exposed to high levels of ETS than in those not exposed. An estimated 8,000 to 26,000 new cases of childhood asthma nationwide and 186 to 600 new cases in Massachusetts could be attributed to ETS exposure each year.

Middle Ear Infections

Middle ear infections are the most common type of childhood illness, resulting in visits to the pediatrician[66] and surgery for young children.[67] An ear infection is caused by fluid leaking into the middle ear and becoming infected, causing pain and fever. If an ear infection progresses, it places a child at risk of meningitis and mastoiditis and can result in hearing loss.[68]

Children under two years of age who are exposed to ETS in the home experience more frequent middle ear infections and are at 11% greater risk of middle ear disease than children who are not exposed.[69]

Middle ear infections associated with ETS exposure resulted in an estimated 0.7 to 1.6 million physician visits nationwide and 15,000 to 36,000 physician office visits in Massachusetts each year.

Adults: Respiratory Health Effects

Adults are also vulnerable to respiratory disorders stemming from ETS exposure. It appears that some adults with asthma have more frequent and more severe asthma attacks when exposed to ETS. Regular long-term exposure to ETS increases the incidence of chronic bronchitis and emphysema among nonsmoking adults. Among adults, senior citizens are the most vulnerable adult age group.

Asthma Exacerbation

ETS exposure may increase the incidence and severity of symptoms in adults with asthma; however, current scientific evidence has not adequately examined the effect to conclusively determine the existence or magnitude of an association.

Although current data are limited, it appears that some adult asthmatics are especially susceptible to ETS exposure; exposure to ETS results in worse control of asthma including more frequent and more severe attacks within this group.[70] One study of adult asthmatics found that exposure to ETS more than doubled the likelihood of moderate or severe shortness of breath. Adults with asthma experienced 61% more days when asthma restricted their activities compared to those not exposed.[71] Another study found that adults regularly exposed to ETS were more likely to have physician-diagnosed asthma than those not exposed.[72] In Massachusetts, according to estimates from the National Center for Health Statistics, 236,843 adult citizens of Massachusetts had asthma in 1994.

If ETS does increase the occurrence and severity of attacks for adults with asthma, exposure will have more far reaching effects on populations with higher rates of asthma. Higher rates of asthma and greater severity have been observed among African-Americans and urban Hispanics of Puerto Rican ancestry.[73]

Chronic Obstructive Pulmonary Disease

Chronic obstructive pulmonary disease (COPD) is a progressive, irreversible condition characterized by chronic bronchitis and emphysema.[i] Although all adults experience a gradual reduction in lung capacity each year, those with COPD lose lung function more quickly and die earlier than people with healthy lungs. In 1996, COPD accounted for 3,456 hospitalizations in Massachusetts.[74] COPD was the forth leading cause of death in the United States in 1995.[75]

Active smoking accelerates the yearly loss of lung function by approximately 30-40%.[76] Although the link between ETS exposure and adult COPD remains unclear, evidence supporting a link is growing stronger. Adults 40-69 years of age regularly exposed to ETS in the home or in the workplace seem to experience a loss of lung function at a quicker rate than those not regularly exposed.[77] Adults exposed to ETS more often suffer from chronic bronchitis and emphysema than nonexposed adults.[78,79] Environmental factors associated with poverty[80] and childhood respiratory infections may also increase the risk for COPD in nonsmokers.[81, 82]

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[i] *Chronic bronchitis* results when too much mucus is secreted into the lungs and leads to the lungs becoming inflamed and infected. People with chronic bronchitis have a constant, hacking cough and an increase in difficulty getting enough air when they breathe.
Emphysema is a breakdown in lung structure and deteriorating elasticity. Although people with emphysema can breathe in, they lose their ability to breathe out and each breath traps a bit of air in their lungs. COPD is usually a combination of bronchitis and emphysema.

Coronary Heart Disease

Coronary heart disease manifests itself in a variety of ways including myocardial infarction, angina pectoris, and sudden unexpected death.[i] A causal association between coronary heart disease and active smoking is well established.[83]

The weight of available evidence supports a causal association between ETS exposure and coronary heart disease mortality in nonsmokers.[84,85] ETS exposure may have both short and long-term effects on the heart.[86] People who have never smoked and are regularly exposed to ETS are found to have coronary heart disease about 20-30% more often than those not exposed.[87, 88, 89, 90]

An estimated 35,000 to 40,000 deaths from cardiovascular disease nationwide[91] and 800 to 1,400 deaths in Massachusetts are attributable to ETS exposure each year.[92]

Cancer

Overall cancer death rates for smokers are about two times higher than that of nonsmokers.[93] Nonsmokers who are exposed to tobacco smoke are exposed to the same toxic elements of tobacco smoke as smokers,[94] although ETS has a higher ratio of many carcinogens than inhaled smoke. Particle sizes also are smaller in ETS and therefore more easily absorbed into the system.

Lung Cancer

The Surgeon General (1986) and the National Research Council (1986) concluded that exposure to ETS can cause lung cancer in adult nonsmokers. The U.S. EPA conducted a weight of evidence analysis for lung cancer hazard identification and based on its review:

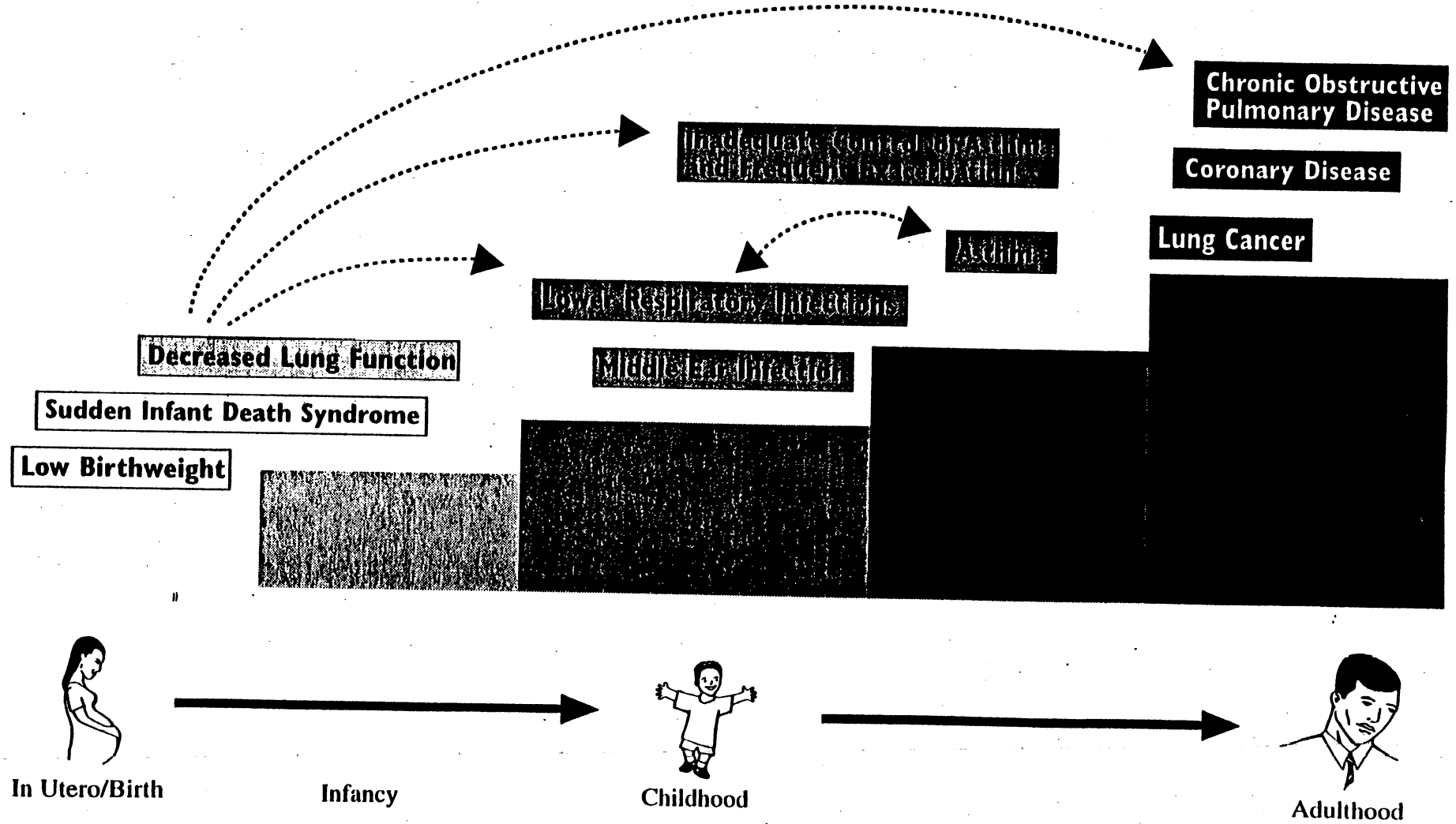
- Classified ETS as a Group A (known human) carcinogen.
- Estimated that approximately 3,000 lung cancer deaths per year among U.S. nonsmokers can be attributed to ETS exposure.

Following the release of its 1992 report, the U.S. EPA's conclusions regarding ETS and lung cancer risk were criticized for methodological concerns raised by

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[i] When *myocardial infarction* (a type of heart attack) occurs, circulation to the heart becomes blocked or too weak to carry sufficient blood. Clusters of tissue in a portion of a person's heart die when the blood supply is cut off.
Angina pectoris is chest pain that is a warning sign of partial blockage of the coronary arteries and reduced oxygen to the heart muscle. Angina pectoris may precede myocardial infarction.
Sudden unexpected death (SUD) is most often the result of the electrical impulses that cause the heart beat to become irregular. SUD occurs with no previous symptoms, as exemplified by the death of Reggie Lewis.

Lifetime Effects of ETS



the studies reviewed in the report.[95] However, three large population-based studies published since 1991 confirmed and extended the results of the U.S. EPA report. These studies observed that nonsmokers exposed to ETS developed lung cancer 19% more often than those not regularly exposed.[96, 97, 98, 99]

It also appears that longer periods of exposure correlate to higher risk for lung cancer. In one study, women with 48 or more years of ETS exposure developed lung cancer 74% more often than women with no ETS exposure. Women who reported they had been exposed to ETS since childhood were 225% more likely to develop lung cancer than women who had not been exposed.[100]

An estimated 3,000 deaths from lung cancer nationwide[101] and 70 deaths in Massachusetts are attributable to ETS exposure each year.[102]

Other Cancers

Evidence of a link between ETS and cancers other than lung is presently inconclusive. The strongest evidence links exposure to ETS and increased risk for nasal sinus cancers in nonsmoking adults. Cervical cancer, adult brain cancer, and cancers of the bladder, breast, and stomach have been studied, but have not produced conclusive results.[103]

3. SUMMARY

It has long been understood that active smoking increases an individual's risk for a variety of diseases including cancer, COPD, and heart disease. More recent studies now show that the effects of smoking are not limited to individuals who smoke, but also extend to those who breathe the smoke released into the air from burning tobacco products. Nonsmokers exposed to ETS inhale many of the same toxic compounds as active smokers. Throughout a person's life, ETS has been demonstrated to have repeated negative impacts on health, increasing the risk for a number of diseases and health conditions.

- Infants exposed before birth to ETS are at an increased risk for low birthweight. Low birthweight increases the risk of sudden infant death syndrome (SIDS), LRIs, and decreased lung function.
- Infants exposed to ETS either by mothers who smoke during pregnancy or by household smoke following birth are at an elevated risk of SIDS.
- Very young children exposed to ETS experience more frequent cases of lower respiratory infections (LRIs) including bronchitis, and pneumonia. Chronic LRIs in very young children increase the risk of asthma, decreased lung function, and chronic obstructive pulmonary disease in adulthood.
- ETS exposure is associated with increased episodes and increased severity of asthma attacks in children who have the disease. ETS may also cause more children to develop asthma.
- Children exposed to ETS at home are at an increased risk of middle ear disease which places them at risk of meningitis, mastoiditis, and possible hearing loss.
- Maternal smoking has been shown to reduce lung function in young children. Although the absolute magnitude of the difference may be small, decreased lung function related to passive smoking may persist in adulthood.
- Exposure to ETS results in less adequate control of asthma, including more frequent and more severe attacks for some adult asthmatics.
- ETS exposure contributes to the development of chronic obstructive pulmonary disease (COPD) in adults.
- Exposure to ETS increases the risk for nonfatal and fatal coronary heart disease.
- ETS has been classified as a Group A (known human) carcinogen with a known association with increased risk of lung cancer. In addition, more than 40 compounds identified as known or probable carcinogens are found in ETS.

Table 4: Estimated Annual Morbidity and Mortality in Nonsmokers Associated with ETS Exposure[i,ii]

Condition	in the U.S.	in Massachusetts
Low birthweight	≈ 9,700 – 18,600 cases	230 – 420 cases
Sudden Infant Death Syndrome (SIDS)	≈ 1,900 – 2,700 deaths	20 deaths
Bronchitis or pneumonia in infants less than 18 months old	150,000 to 300,000 cases 7,500 to 15,000 hospitalizations	3,400 – 6,900 cases 170 – 350 hospitalizations 3 – 5 deaths
Asthma exacerbation among children	400,000 to 1,000,000 children affected	9,300 – 23,000 children affected
Asthma induction in children	8,000 to 26,000 new cases	180 – 600 new cases
Middle ear infection	0.7 to 1.6 million physician office visits	15,000 – 36,000 physician office visits
Coronary heart disease	35,000 to 62,000 deaths	800 – 1,400 deaths
Lung cancer	3,000 deaths	70 deaths

ETS exposure must be seen as an especially important public health issue for children. First, because young children's respiratory systems are in a stage of development, they are particularly susceptible to long term harm from exposure to the toxic substances in ETS. Secondly, prevention of exposure to these substances at an early age can decrease an individual's lifetime risk of developing disease. Finally, children can not advocate for themselves and must depend upon adults to create a safe and healthy environment in which they can develop.

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[i] National estimates derived from California Environmental Protection Agency. (CA EPA 1997) *Health Effects of Exposure to Environmental Tobacco Smoke. Final Report.* Berkeley California: California Environmental Protection Agency. Office of Environmental Health Hazard Assessment.

[ii] Testimony of JL Repace, MSc. Massachusetts Department of Public Health Hearing on proposed regulation on Testing and Reporting of Constituents of Cigarette Smoke: 105 CMR 665.000. September 22, 1998. Boston, MA.

PART 2: WHAT CAN BE DONE TO REDUCE INVOLUNTARY EXPOSURE TO ETS?

1. BACKGROUND

Public health officials, community groups and citizens throughout Massachusetts have taken significant steps to reduce involuntary exposure to ETS. The regulatory response at all levels of government, especially local and state levels, and the passage of Question 1 have all played a role in reducing the number of public places individuals are involuntarily exposed to tobacco smoke. Public opinion in Massachusetts favors restrictions to reduce ETS and is growing stronger. In a 1996 survey, 60.5% of nonsmoking and smoking adults reported favoring formal policies to limit ETS, up from 58.2% in 1995.[104]

Local efforts

Local efforts to control involuntary ETS exposure enable communities to tailor solutions to the concerns of their populations. Municipalities involved in designing their own tobacco control strategies achieve a level of involvement and commitment to the issue that may not occur when regulations are handed down from the state or federal levels. The success of local tobacco control efforts is evident in the fact that the tobacco industry promotes state-level legislation in order to preempt more restrictive local regulations.[105,106]

According to Massachusetts statutes, cities and towns have the authority to regulate local matters as long as the regulations do not contradict existing state laws.[107] Restrictions adopted by local Boards of Health as regulations, at town meetings as by-laws, and by city councils as ordinances reduce involuntary exposure in the workplace, municipal buildings, restaurants, and other public places.

Municipal Buildings

Between 1992 and 1997, 116 cities and towns enacted provisions banning smoking in municipal buildings. In 1997, the combined population of cities and towns with local regulations banning smoking in municipal buildings exceeded 2.9 million, slightly less than 50% of the entire population of the Commonwealth.[108] Many additional municipalities have adopted internal policies protecting their citizens from involuntary exposure to ETS in municipal buildings.

Workplaces

A survey conducted in Massachusetts showed that in 1996, the adult population was exposed to ETS at work an average of 2.3 hours a week, down from 4.6 hours in 1993.[109] In 1997, 65% of employees in Massachusetts worked in places that banned indoor smoking.[110] Larger employers have most readily implemented voluntary smoking restrictions: a survey conducted in 1997 found 78% of Massachusetts' 3,000 largest employers have complete smoking bans, 20% allow smoking only in designated areas, and only 2% have no policy at all. [111]

Restaurants

As of October 1998, 142 of the 351 municipalities in Massachusetts restricted smoking in restaurants to some extent[112] (Table 5). Roughly 40% of the Massachusetts population now lives in a city or town where ETS exposure in restaurants has been regulated. This number increases when taking into account the 113 towns in Massachusetts with populations under 5,000. The combined population of these small towns is approximately 245,000. Because most of these towns do not have restaurants within their limits—and those that do have only one or two—regulating smoking in restaurants is either not necessary or not as high a priority as in cities and towns with a large number of restaurants.

Table 5: Summary of Massachusetts Local Ordinances with Respect to Restaurants & Bars[113, 114]

Number	Restriction	Cities and Towns
15	Complete ban on smoking in all restaurants and bars.	Amherst, Arlington, Belmont, Boxborough, Chatham (eff. 1/99), Cohasset (eff. 1/99), Concord, Dover, Hingham (eff. 1/99), Lexington, Melrose (eff. 3/99), Montague, Stoneham, Wakefield, Wareham (eff. 1/99)
10	Complete ban on smoking in restaurants but not in bars.	Andover, Athol, Groton, Lee, Lenox, Marblehead, Plainville, Pittsfield, Stockbridge, Wayland, Westfield
17	Smoke free restaurants - variance given for smoking area if smoke can not circulate to any other section of the dining area.	Acushnet, Brookline, Chicopee, Foxborough, Marion, Needham, Newton, North Andover, Northampton, Sharon, Sudbury, Swampscott, Wayland, Wellfleet, Westminster, Westwood, Winchester
40	Smoking area allowed in restaurants if separated by a floor to ceiling wall and/or separate ventilation system.	Acton, Bedford, Belchertown, Canton, Chelmsford, Chilmark, Danvers, Deerfield, Easthampton, Fitchburg, Gardner, Greenfield, Groveland, Hamilton, Haverhill (50+ seats), Holden, Holyoke, Hopkinton, Leominster, East Longmeadow, Lynnfield, Medfield, Milford, Millis, Norfolk, Norwood, Orleans, Plymouth, Reading, Saugus (eff. 1/99), Sherborn, Southampton, South Hadley, Sunderland, Tewksbury, Westborough, Westford, West Springfield, West Tisbury, Wilbraham
4	Designated smoking area allowed in bar area only - neither ventilation nor physical separation required.	Boston,[i] Chelsea, Williamstown (50+ seats), Somerville (restaurant must apply for variance)
4	Smoke free requirement for restaurants of a certain size or smaller.	North Attleboro (< 25 seats), Falmouth and Sandwich (< 800 sq. feet)
1	Smoke free requirement for establishments that admit minors.	Attleboro

[i] Over 1,400 restaurants in Boston are smoke-free because they have no liquor license, no bar area, or have voluntarily gone smoke free.

An additional 56 communities require restaurants to provide a no smoking section for their customers. The communities requiring a no smoking section are: Auburn, Beverly, Billerica, Blackstone, Bourne, Braintree, Brewster, Burlington, Cambridge, Clinton, Dedham, Dracut, Dudley, Egremont, Everett, Framingham, Franklin, Georgetown, Gloucester, Great Barrington, Harwich, Hull, Lanesborough, Lawrence, Littleton, Lowell, Malden, Mansfield, Marlborough, Mashpee, Medford, Methuen, Milton, Nahant, Natick, Newburyport, Norton, Norwell, Peabody, Provincetown, Quincy, Randolph, Revere, Rochester, Salem, Scituate, Sheffield, Southwick, Sterling, Stoughton, Walpole, Waltham, Watertown, West Boylston, Weymouth, and Willmington.

Other Areas

Brookline now prohibits smoking in taxi cabs to protect drivers and passengers from involuntary ETS exposure. The town of Sharon prohibits smoking on all public playgrounds and beaches.

State Laws and Regulations

By 1997, smoking was banned in all Massachusetts state buildings, including in the State House and state university buildings.[115] The following is a compilation of other places in which involuntary exposure to ETS has been limited by Massachusetts law:

1. Public institutions of higher education that provide housing for students in dormitories must reserve a certain number of dormitory rooms for nonsmokers (M.G.L. C. 15A, SEC 16A) created 1987.
2. In a polling location during an election or during a town meeting, smoking is not allowed (M.G.L. C. 54, SEC 73) created 1913; amended 1946.
3. Public and private nursing homes must have designated no smoking sections in common areas, including lobbies, cafeterias, conference rooms, and employee lounges. Nursing home employees are prohibited from smoking in all patient care areas (M.G.L. C. 111, SEC 72) created 1987.
4. Within school buildings and facilities or on school grounds and school buses the use of any tobacco products is prohibited by anyone, including personnel. Students who disobey this rule face disciplinary proceedings, and possible suspension and expulsion from school (M.G.L. C. 71, SEC 37H) created 1993.
5. Forest land is protected from having any lit cigarette, cigar, match, live ash, or other fire placed upon it (M.G.L. C. 148, SEC 54) created 1930; amended 1952.

6. In jury rooms, smoking is prohibited unless the majority of a given jury's members give their consent (M.G.L. C. 234, SEC 34C) created 1986.
7. On public transportation or in terminals of the Massachusetts Bay Transportation Authority, smoking is prohibited (M.G.L. C. 272, SEC 43A) added 1947; amended 1987.
8. In stables for horses or mules, no lighted cigarette, cigar, or pipe is allowed (M.G.L. C. 272, SEC 86C) created 1924.
9. In public places, including public elevators, supermarkets and retail food outlets, public mass transit conveyances, and open meetings of a government body smoking is prohibited. In any courthouse, school, college, university, museum, library, train, airplane, waiting area of an airport, waiting area of a health care facility, group child care center, school-age day care center, or family day care center smoking is restricted to designated smoking areas (M.G.L. C. 270, SEC 22) added 1975; amended 1987.[116]

Sanitary Code

The Minimum Sanitation Standards for Food Establishments (105 CMR 590.011), commonly called the Sanitary Code, prohibits restaurant employees from eating food or smoking tobacco except in designated areas.[117] The Sanitary Code also prohibits all poisonous or toxic materials except those necessary for the maintenance of the restaurant, such as cleaning solvents and pest control substances (105 CMR 590.026 A).

Fire Safety

The Board of Fire Prevention and Regulations (527 CMR 10.07) prohibits smoking in the following locations:

1. Factories, workshops, mercantile establishments or warehouses where, in the opinion of the head of the fire department, smoking will constitute a fire hazard.
2. Schools, colleges, universities, public buildings, and institutions except in designated areas.
3. Docks, wharves, and waterfront areas.[6]

Federal laws

Federal laws prohibit smoking in:

1. Any indoor facility serving children and used for kindergarten through grade 12, or facilities providing library services, day care, health care, or early childhood development services (USCS SEC 6083) "Pro-Children Act of 1994."

2. The passenger cabin or lavatory of an aircraft operating in the United States, the District of Columbia, Puerto Rico, or the Virgin Islands (USCS SEC 41706) "Federal Aviation Act" Amended 1994.

Where Are People Still Exposed?

The Task Force found that although Massachusetts and its cities and towns have implemented numerous restrictions and outright bans on tobacco smoke, involuntary exposure nonetheless exists in a number of areas:

- *Worksites that have not implemented smoking bans*—Smaller workplaces such as stores and garages are less likely than larger workplaces to regulate ETS levels.
- *Restaurants and bars*—For many restaurant and bar workers, involuntary exposure to ETS is a condition of employment. Bar employees are exposed to levels of ETS 3.9-6.1 times higher than the average levels found in offices.[118, 119] Restaurant employees are exposed to ETS at levels 1.6-2.0 higher than office levels.[120, 121] Although ventilation and separately enclosed smoking areas may reduce the amount of exposure, customers who ask to sit in the nonsmoking section may breathe the smoke that circulates between smoking and nonsmoking sections.
- *Residential jobsites*—Residents and staff in residential settings—both privately and publicly operated—are involuntarily exposed to ETS generated by other residents or staff who smoke. These settings include nursing homes, rest homes, and other jobsites funded by state human service agencies.[122]
- *Locations where regulations are not enforced*—Despite the existence of state laws and local provisions, involuntary exposure to ETS often continues on school grounds, public transportation, and other places where enforcement mechanisms are not sufficient to provide meaningful protection.
- *State and municipal vehicles*—Policies that prohibit smoking in state and municipal buildings do not cover state vehicles and rarely include municipal vehicles.
- *Private homes*—Despite reductions in the number of adult smokers in the Commonwealth, the home remains an important source of involuntary exposure, especially for children of smokers. This fact suggests the need for education to encourage voluntary smoking cessation without regulating private behavior.

What Can Be Done to Reduce or Eliminate Involuntary Exposure?

In order to reduce the negative impact of ETS exposure on both individual and public health, involuntary exposure to tobacco smoke should be eliminated.

However, some communities may not be immediately prepared for an outright ban. In these cases, incremental reduction may be most practical.

Because different situations call for different approaches, it is helpful to understand the pros and cons of various barrier and ventilation methods. There are roughly three levels of control for any airborne environmental contaminant including ETS. Ranked in order of effectiveness from most to least effective, the options are:

1. Elimination or substitution of the source.
2. Local ventilation and/or enclosure.
3. General dilution ventilation.[123]

There are no guidelines delineating an acceptable level of ETS. A study by Repace and Lowrey[124] found that filtering and dilution would not adequately reduce exposure even in an office with moderate smoking. The Occupational Safety and Health Administration concluded that only bans and separately ventilated smoking rooms effectively reduce ETS exposure in the workplace.[125]

Elimination or Substitution of the Source

The best and most effective option is to eliminate any hazardous substance completely. Bans on smoking effectively eliminate the source of exposure, are often feasible, and require only minimal direct costs for implementation. Some investigators have estimated that workplace smoking bans prompt approximately 5% of smokers to quit smoking. Those who do not quit smoke 10% less than they had before the ban.[126] Thus a doubly important service is provided through these approaches.

Local Ventilation and/or Enclosure

If a ban is not possible, the next step is local ventilation, which can prevent smoke from getting into the general breathing space. Separately enclosed and ventilated smoking areas may be effective at isolating ETS but can be costly to construct and maintain and do not protect workers who must enter them, as in the case of many restaurant workers. Further, restricting smoking to separately enclosed areas may expose smokers and bar and restaurant workers to significantly higher concentrations of ETS.[127] To construct a truly separate smoking area, walls and doorways must completely enclose the area and the area must be served by a separate ventilation system. The HVAC system must supply 60 cubic feet per minute of fresh air per person and place the room under negative pressure[i] relative

[i] In a room under negative pressure, any leakage of air through cracks flows into rather than out of the room.

to the rest of the building.[128] As a result of heating and cooling fresh/outdoor air, the cost of this option increases considerably.

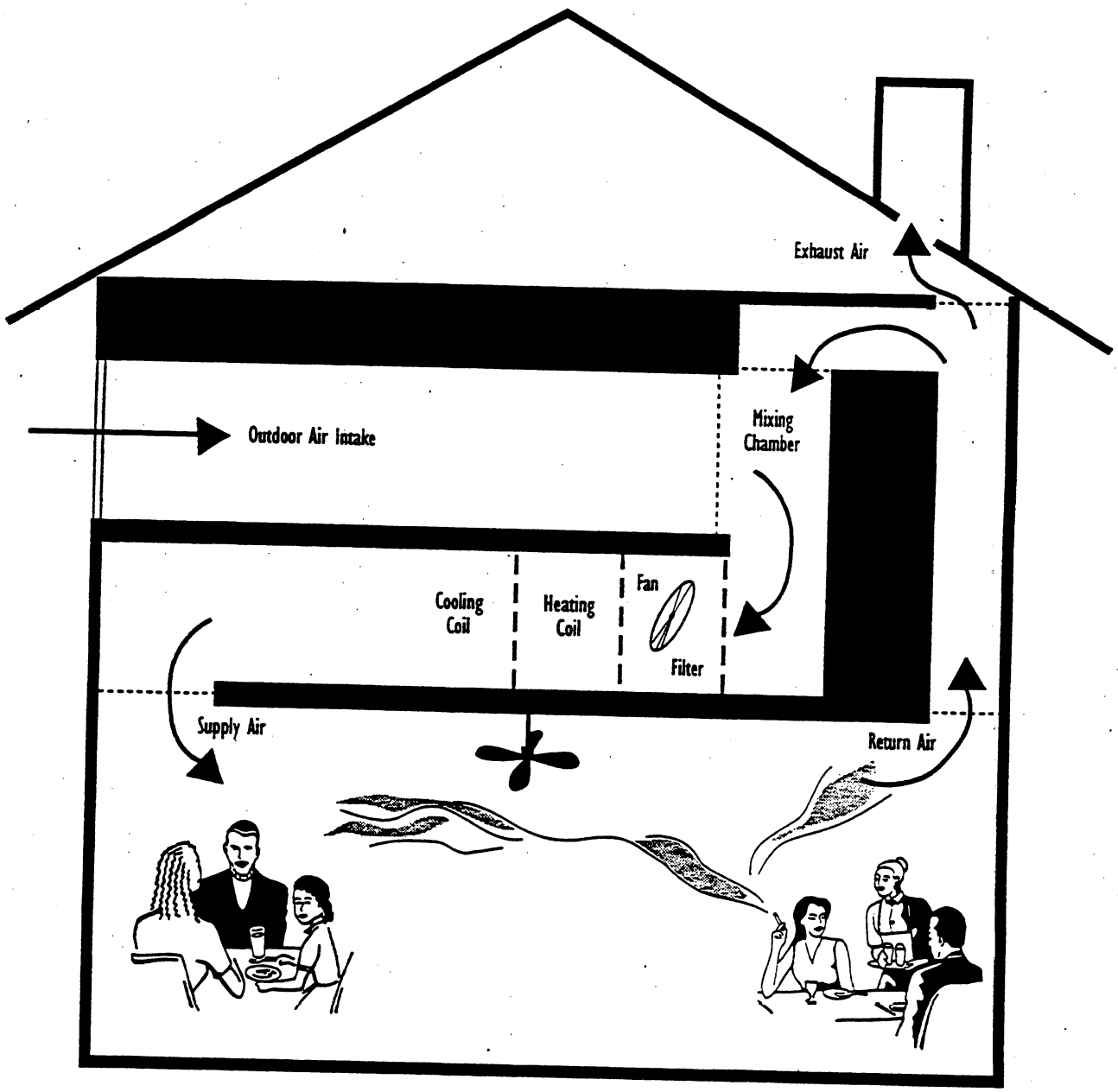
General dilution ventilation

Presently, a few Massachusetts municipalities allow restaurants to have smoking areas separated from nonsmoking areas by only space. While this may be a first step toward implementing stronger restrictions, it is not effective at protecting workers and customers. A separate smoking section can be combined with some sort of ventilation that is intended to reduce levels of ETS and limit ETS levels in the nonsmoking section. Unfortunately, these systems can not adequately reduce ETS levels in either the smoking section or the nonsmoking section.

Ventilation options fall into two categories. One approach entails providing fresh outdoor air, combined with some recirculated air, as a means to dilute levels of ETS (see illustration). This type of ventilation can actually help to spread ETS to other parts of the building. The second approach is the use of filtering devices that recirculate all of the air that they filter. Air filters have been shown to be unable to reduce ETS contaminants below levels that the US EPA uses to gauge hazards at Superfund hazardous waste sites.[129] In addition, filtering systems range in cost from $3,000 to $4,500 for a medium-sized restaurant.

In conclusion, smoking bans are the most effective as well as the least expensive method of addressing ETS exposure. Bans are also the only method that can eliminate exposure to ETS. Separately enclosed and ventilated smoking areas are usually expensive to install and maintain, and do not protect workers. General dilution ventilation varies in effectiveness, but at best it reduces rather than eliminates exposure to ETS and at worst it may spread ETS throughout an establishment. Filtering devices can also reduce exposure, but not below levels that represent significant health risks. Furthermore, filtering may not remove all constituents of ETS and will not supply fresh air to the space. The least effective control measure is a smoking section without a physical barrier and without ventilation. Nonetheless, all of these measures provide protection, albeit very limited in some cases, compared to facilities with no controls.

General Dilution Ventilation & Smoking



Restaurant

A ventilation system can spread smoke from smoking sections to non-smoking sections rather than help resolve the problem of ETS.

2. Recommendations of the Task Force

Rationale

The goal of this report is to provide guidance and direction to state and local policymakers seeking to address the problem of the adverse effects of involuntary exposure to ETS. Several key facts establish involuntary ETS exposure as an important public health threat and have shaped the Task Force's thinking in formulating these recommendations. These facts include:

- There is no disagreement that ETS exposure adversely affects human health. Debate instead centers only on the magnitude and severity of these effects.
- ETS is a major issue for children. Asthma, pneumonia, bronchitis, inner ear infections, and decreased lung development in children have all been linked to ETS exposure.
- ETS exposure is associated with increased rates of disease and death in adults already compromised by heart disease, emphysema, and asthma. Because diabetes and high blood pressure increase the risk of heart attack, exposure to ETS jeopardizes the health of individuals with these conditions as well.
- People at lower income levels are more susceptible to complications associated with ETS due to a generally higher frequency of disease, inadequate housing, and limited access to care.
- Refusing to restrict or ban smoking in some workplaces, i.e., restaurants with bars, and not others, prevents certain workers from receiving the same protections as those in smokefree settings.
- The tobacco industry has attempted to subvert the intent of local actions by pursuing statewide preemptive measures.
- There appears to be strong public opinion in favor of eliminating involuntary ETS exposure. The vast majority of people in Massachusetts (79%) do not smoke and many smokers support smoking restrictions.

The ETS Task Force has developed a series of policy recommendations that target a range of policy options rather than propose a comprehensive ban. The Task Force believes that this approach affords greater flexibility to state and local policymakers in addition to reducing the chance that preemption clauses and/or amendments could be used to weaken the policy's intended effect.

Principles

The Task Force adopted five general principles in developing its recommendations:

1. *Consistency on the state level:* As the Commonwealth pursues strategies to reduce involuntary ETS exposure statewide, it should apply equally stringent standards across state government. Building on the success with which tobacco smoke was eliminated in the State House, the Commonwealth should continue to examine smoking policies and procedures in the legislative, judicial, and executive branches of state government. The state should promote measures to protect workers and special populations over which it has responsibility from exposure to ETS.
2. *Enforcement:* Unless regulations prohibiting or restricting tobacco smoke are enforced, involuntary exposure to ETS continues. Every policy regulating ETS should include an enforcement plan designating the enforcing department or agency and the means by which enforcement will be carried out. This is especially true with state laws.
3. *Evaluation:* While introducing or enforcing regulations on involuntary ETS exposure, the Commonwealth should evaluate the effectiveness of programs it has implemented. Evaluation results should help ensure the designation of resources to effective programs.
4. *Long-term effectiveness:* Experience locally and nationally in developing regulations suggest that it takes time for communities to develop and implement effective control policies. The involvement of local citizens is a critical factor in ensuring a policy's success. Decision-making on the local level often requires education and time for community support to build. Because of this, many successful regulations have been made in incremental stages rather than all at once.
5. *Private behavior:* The Task Force is emphatically opposed to trying to regulate personal behavior in the privacy of the home. In the same spirit with which the Task Force recommends regulations of smoking to protect people from involuntary exposure to ETS in public places, we do believe, however, that the Commonwealth has an affirmative obligation to encourage its citizens to alter behaviors that may have adverse consequences for themselves and others. Every effort should be made to 1) inform the citizens of Massachusetts about the health dangers associated with ETS and 2) support citizens who want to quit smoking.

Guidelines

The Task Force has reviewed the guidelines established by the Massachusetts Coalition for a Healthy Future[i] to ensure that legislative efforts will advance rather than hinder efforts to control ETS exposure and has found them a worthwhile tool to help shape its recommendations. According to these guidelines, proposed state policy should:

- Reduce exposure to ETS.
- Use specific language to ensure the policy will not preempt any local regulations now or in the future.[ii]
- Provide for effective enforcement.
- Withstand legal and/or constitutional challenge.

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[i] The Massachusetts Coalition for a Healthy Future (MCHF) represents the organizations which originally worked together to promote the successful passage of the Question 1 tobacco tax initiative campaign of 1992. The MCHF now works to promote the intent and spirit of Question 1.

[ii] Anti-preemption language developed by the Tobacco Control resource Center reads "Nothing in any of the sections of this Act shall be constructed to preempt that authority of any local government, board of health, health department, or any other health agency to promulgate, enact or enforce any law, ordinance, by-law, or regulation which requires a permit or license for the sale of tobacco products or which regulates the sale, distribution, or use of tobacco products."

Recommendations

The Task Force recommends action in the areas of state and local policy, education, enforcement, and evaluation to reduce involuntary exposure to ETS.

Local Efforts

1. Support intensive and sustained community efforts

In light of the significant progress made within its cities and towns reducing ETS exposure, the Massachusetts Tobacco Control Program should continue and expand its support of local efforts. In addition to current efforts, the Task Force recommends Massachusetts municipalities receive further assistance in:

- Galvanizing community support.
- Utilizing public opinion polls.
- Addressing barriers to implementing and enforcing local ordinances.

Information on the cities and towns with restrictions already in effect and the impact of those restrictions should continuously be monitored, gathered, and disseminated to municipalities throughout the Commonwealth.

2. Enforcement

Regulations of ETS must be backed up with effective enforcement mechanisms. Local boards of health and authorized agents primarily enforce ETS control measures. However, if one company or establishment repeatedly violates a regulation, the local police departments and the state Department of Health should become involved. If necessary, the Attorney General should be called upon to help enforce ETS regulations as in the case of eliminating the sale of tobacco products to minors.

Local governments should receive support to ensure that regulations will be enforced. Without effective enforcement measures, regulations are meaningless. One area of immediate concern to many municipalities is lack of financial resources to require compliance with ETS regulations.

3. Education

a. Support programs that will reduce ETS levels in homes

The Task Force does not advocate restrictions on behavior in private settings however, it is impossible to overlook the importance of the home as a source of ETS exposure, particularly for children of smoking parents. Educational efforts targeted at smokers should suggest voluntary smoking restrictions in the home.

Smokers who want to quit need support in the form of more easily accessible smoking cessation programs and nicotine replacement therapy.

- Smoking cessation groups, already available through hospitals and health centers, should also be offered through workplaces.
- Nicotine replacement therapy should be covered by health plans.

b. Use media to increase awareness

Although Massachusetts' mass-media anti-smoking campaign has received national recognition, the campaign needs to 1) help people sort through conflicting information about the dangers of tobacco smoke and 2) provide guidance to citizens who wish to become involved in tobacco control at the local level. One case in point involves a Federal judge from North Carolina's vacating of the EPA's 1992 report. Media coverage of this motion has weakened the public's perception of ETS as a dangerous substance. Information explaining that decision and the fact that numerous other scientific studies support the conclusions of the EPA have not received comparable coverage in mainstream news. Public officials and community leaders must take affirmative steps to increase the availability of accurate information about adverse health effects associated with ETS exposure.

4. Research and evaluation

While promoting policy to reduce involuntary ETS exposure, communities should evaluate the effectiveness of programs they have implemented. The Task Force recommends that funds be designated to research and evaluate the effectiveness of ETS control strategies. The findings should promote the decision to continue and emulate programs of proven effectiveness while refining programs that have not achieved desired results.

5. Municipal vehicles.

On both the state and local levels, protections from involuntary exposure to ETS do not always extend to government owned and operated vehicles. Localities ought to review their policies and take action to protect their employees and other passengers in municipal vehicles from involuntary exposure to ETS.

State Policy

1. Consider using the Minimum Sanitation Standards for Food Establishments (Sanitary Code) to regulate involuntary exposure in restaurants.

ETS has been classified as a carcinogen and releases carcinogenic substances (i.e., benzene, formaldehyde, and arsenic) into the air people breathe. The Sanitary Code prohibits all poisonous or toxic materials. Although no cases in point presently exist, the Sanitary Code seems to prohibit the presence of ETS simply

on the basis of its known association with numerous adverse health effects and its strong link to lung cancer. Just as the Sanitary Code has been enforced to regulate the temperatures of hot water heaters in rental housing in order to protect children from being burned by hot water, it could also serve to regulate ETS exposure on the basis of its association with numerous adverse health effects.

The Sanitary Code requires all restaurants to hold a valid permit issued by the Board of Health (105 CMR 590.052 A1). Boards of Health have the authority to collect fines from establishments that fail to observe the established regulations. An interpretation of the Sanitary Code suggests that if a restaurant refuses to comply with an ETS regulation after a designated number of warnings and fines, the board may revoke or refuse to renew the establishment's permit, forcing its closure until the matter is resolved.

It is beyond the scope of this Task Force to fully address the nuances involved; however, we do recommend the State Sanitary Code be seriously reviewed as a possible vehicle for protecting citizens from involuntary ETS exposure in restaurants and public housing. The Task Force does not suggest that the Sanitary Code be amended, but rather, that it be applied as it is written to reduce involuntary exposure to ETS.

2. Ensure protection for those under state care and state employees.
The Task Force has identified four areas in which state policy should examine its procedures for protecting its employees and those in its care from involuntary ETS exposure.

a. Foster homes
As wards of the state, foster children should be protected from involuntary exposure to ETS to the greatest extent possible. However, prohibiting smoking in foster homes could lead to unintended harm if the already limited number of available foster families were further reduced as a result. Given that the state has assumed responsibility for foster children's well being and in recognition of children's particular susceptibility to adverse health effects of ETS, the issue of involuntary exposure in foster homes should be addressed. The committee recommends the following actions to reduce involuntary exposure while not compromising its foster program:

- Provide education on the effects of ETS exposure to each foster family and the importance of restricting smoking to outside areas or a designated room that can be separated by a door from the rest of the house.
- Provide smoking cessation services and nicotine replacement therapy to foster families.

b. State-run residences

A recent survey of residential settings funded by the Department of Mental Health (DMR) revealed that state-operated residences enforce stronger regulations controlling ETS than residences operated by private agencies under state contract.[130] In accordance with DMR Smoking Policy #94-1 issued in 1994, employees are prohibited from smoking inside residences and offices operated by the state. Residents who smoke are restricted to designated areas. Residences operated by private vendors, in contrast, report a wide variation in smoking policies, some being more and some being less restrictive than DMR itself. Information on smoking policies and practices in residences funded by other state human service agencies is even more limited.

The Task Force recommends that the state agencies review their policies to assure that clients and employees receive meaningful protections from involuntary exposure to ETS. Further, the Commonwealth should review its contractual policies with residential providers to assure that programs run by private vendors also afford employees and clients appropriate protections from involuntary ETS exposure.

c. State and public safety vehicles

Presently, state policy allows smoking in state vehicles if the smoker is alone in the vehicle or has the permission of the other people in the vehicle.[131] However, any Massachusetts police officer hired after January 1, 1988 (M.G.L. C. 41 SEC 181A) may not smoke tobacco either on or off the job, although police officers hired before 1988 retain the right to smoke. Without a smoking ban in state vehicles, law enforcement officials hired after 1987 may be involuntarily exposed to the tobacco smoke of officials hired before 1988 while riding in state vehicles.

The Task Force recommends that protections from involuntary exposure to ETS extend to government owned and operated vehicles. Smoking should be banned in all state owned and operated vehicles.

3. Adjust insurance rates to cover costs incurred by involuntary ETS exposure

The adverse health effects imposed on employees involuntarily exposed to ETS and the increased safety risks created by smoking add to the cost of insurance. Employers who permit unrestricted smoking in work areas pose a higher cost risk for insurance companies. For the purpose of this policy recommendation, protection from involuntary ETS exposure is accomplished by a 100% smoke free workplace or by allowing smoking only in separately enclosed and ventilated smoking areas.

a) *Workers Compensation Insurance:* Employers who do not protect their employees from ETS exposure should pay higher workers compensation premiums.

b) *Fire Insurance:* Because smoking increases the incidence of structural fires and fire-related deaths, employers who allow smoking in the workplace should pay higher fire insurance premiums.

c) *Health Insurance:* Without universal health insurance, many workers currently go to work with the dual disadvantage of 1) involuntary exposure to ETS in the workplace and 2) no health coverage. The Task Force endorses the concept of universal health coverage, but until the time of its passage, the Task Force recommends an interim policy by which employees exposed involuntarily to ETS in the workplace will have health insurance.

Employers (including restaurant owners) may either protect their employees from involuntary ETS exposure or provide health insurance for all employees, including full time and part time, nonsmoking, and smoking employees.

3. SUMMARY

Massachusetts has made considerable progress in reducing levels of involuntary exposure to ETS. Policies on the local and state levels create a broad base of protections from involuntary exposure. However, much remains to be accomplished.

Individuals continue to be involuntarily exposed to ETS in unregulated worksites, restaurants and bars, communities with no ordinances, state and municipal vehicles, and many state residential programs. Greater attention is needed to enforce existing regulations and make them more effective in reducing involuntary ETS exposure. This will require the commitment of additional resources.

Bans are more effective and cost less to implement than any other approach in preventing involuntary ETS exposure. Some communities may not be prepared for an outright ban. In these cases, incremental reductions may be the most practical way to reduce involuntary exposure.

This report aims to provide guidance and direction to state and local policymakers seeking to address the problem of the adverse effects of involuntary exposure to ETS. The Task Force has recommended action on local and state levels to reduce involuntary exposure to ETS and its impact on public health.

Local efforts should:

1. Support intensive and sustained community efforts.
2. Provide mechanisms for effective enforcement.
3. Provide education and support to reduce ETS levels in homes through voluntary smoking restrictions (i.e., outdoor smoking only) and help smokers quit.
4. Use media to help the public sort through conflicting information about the dangers of tobacco smoke.
5. Research and evaluate the effectiveness of ETS control strategies.

On the state level ETS control efforts should:

1. Use the Minimum Sanitation Standards for Food Establishments (Sanitary Code) to regulate involuntary exposure in restaurants.
2. Ensure protection for those under state care and for state employees.
3. Extend protections from involuntary exposure to ETS to government owned and operated vehicles.
4. Adjust insurance rates to cover costs incurred by involuntary ETS exposure.

Children, the elderly, people of low income, and people with certain disabilities are particularly susceptible to the adverse health effects from ETS exposure. It is incumbent upon the Commonwealth to protect these and all of its citizens from involuntary exposure.

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019

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

3 of 3