

City of Cambridge

MASSACHUSETTS

In City Council 4-26, 1998

13 Ordinance of prohib of smoking in parks

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

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City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Eight

AN ORDINANCE

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

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

That Chapter 8.28 of the Municipal Code entitled "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places" is hereby amended in Section 8.28.020 entitled "Definition" by inserting after the definition "Private Club" the following:

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

Also, by adding a new section 8.28.055 entitled "Restriction on smoking in public parks .

8.28.055 Restriction on smoking in public parks .

A. No person shall smoke in any outdoor public park which is maintained by the authority of the city of Cambridge.

In City Council April 27, 1998.

Passed to be ordained by a ye and nay vote:-
Yeas 9; Nays 0; Absent 0 .

ATTEST:-

D. Margaret Drury
City Clerk

Councillor Toomey stated that he finds it appalling that the Chief Public Health Officer is not one hundred percent in favor of stopping smoking and passing whatever laws help to stop smoking. Smoking is one of the biggest public health problems we face.

Mr. Cox submitted information about the outdoor smoking restrictions in Sharon and a copy of the Sharon bylaw. Attachment C.

Paul Ryder asked how enforcement will work.

Councillor Davis asked how enforcement works under the existing ordinance.

Ms. Sullivan stated that it is primarily complaint driven. To date, fines have not been levied on smokers.

Councillor Toomey stated that he is not advocating coming down hard on the smokers. Hopefully, if people are aware of the prohibition, they will honor it.

Mayor Duehay noted the difference between the MBTA and the Washington subway. In Washington, an employee comes up to a smoker immediately and requests that the cigarette be extinguished. As a result, one rarely observes smoking in the Washington stations. He stated that employee training will be very important to the success of this ordinance.

Councillor Davis asked who can ticket violators.

Ms. Sullivan stated that police officers, dog officers, Inspectional Services inspections, parking control officers and the License Commission can enforce the ordinance. The fine is \$25.00 per violation.

Councillor Triantafillou stated that if there were a rule, she believes that anyone could point to the rule and request that the smoker extinguish his or her cigarette.

Councillor Toomey stated that he expects that there will be a lot of peer pressure by other adults.

Councillor Davis asked Lt. Williams how useful posting signs will be. Lt. Williams stated that it depends on the individuals. He noted that there should be some thought to the next level of enforcement, the courts. Cambridge police are seeing routine dismissal of quality of life issues by the Presiding Justice of the District Court.

Councillor Duehay suggested that the Police Commissioner produce a memo detailing this problem and then that the Chair of the Ordinance Committee arrange a meeting of City Councillors, public health officials and the judiciary. It is important to have some common understanding of the importance of the public health issue and the laws enacted to preserve public health.

Mayor Duehay moved that the proposed amendment be referred to the full City Council with a favorable recommendation, and the motion passed unanimously on a voice vote.

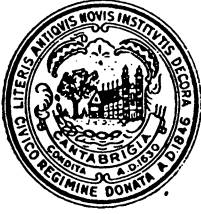
The meeting was adjourned at 6:00 p.m.

Subsequent to the meeting, Attorney Arthur Goldberg submitted a memorandum recommending some stylistic changes to the proposed ordinance. A copy of that memorandum is attached to this report. Attachment B.

For the Committee,

A handwritten signature in black ink, appearing to read 'Henrietta Davis', written in a cursive style.

Councillor Henrietta Davis
Chair



City of Cambridge

In the Year One Thousand, Nine Hundred Ninety-Eight

AN ORDINANCE

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

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

That Chapter 8.28 of the Municipal Code entitled "Restrictions on Youth Access to Tobacco Products and on Smoking in Workplaces and Public Places" is hereby amended in Section 8.28.020 entitled "Definition" by inserting after the definition "Private Club" the following:

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

Also, by adding a new section 8.28.055 entitled "Restriction on smoking in public parks and tot-lots, so called.

8.28.055 Restriction on smoking in public parks and tot-lots, so called.

A. No person shall smoke in any outdoor public park or "tot lot," so-called which is maintained by the authority of the city of Cambridge.

1. "No smoking" signs or signs bearing the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) shall be conspicuously posted at the entrance to each public park or tot lot subject to this chapter.

A

Amendment 1

Chapter 8.28 of the Cambridge Municipal Code is hereby amended by inserting after the definition of "Private Club" in Section 8.28.20 (Definitions) the following:

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

Amendment 2

Chapter 8.28 of the Cambridge Municipal Code is hereby amended by inserting after Section 8.28.050 the following new section:

Chapter 8.28.055 Restriction on smoking in public parks and tot-lots, so-called

A. No person shall smoke in any outdoor public park or "tot lot," so-called which is maintained by the authority of the city of Cambridge.

1) "No Smoking" signs or signs bearing the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) shall be conspicuously posted at the entrance to each public park or tot lot subject to this chapter.

Russell B. Higley
 City Solicitor

Donald A. Drisdell
 Deputy City Solicitor

Nancy E. Glowa
 First Assistant
 City Solicitor

Arthur J. Goldberg
 Supervising
 Legal Counsel



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Michael C. Costello
 Assistant City Solicitor

To: D. Margaret Drury, City Clerk
 From: Arthur Goldberg *AGS*
 Date: March 19, 1998
 Re: Proposed ordinance on restricting smoking in parks

This is to follow up on last night's Ordinance Committee meeting at which a proposed ordinance amendment to restrict smoking in City parks was discussed. I have retyped the proposed language below with suggestions for stylistic changes in shaded type and with proposed deletions in lined-out type.

8.28.020

"Public park" means and includes all outdoor playgrounds, fields, reservations and tot lots, so-called, to which the public is invited and permitted. This includes, but is not limited to, any ~~public park~~¹ ~~such land~~ adjacent to any public school or city operated building in the City of Cambridge.

8.28.055

Restriction on smoking in public parks ~~and tot lots, so called.~~²

A. No person shall smoke in any outdoor public park ~~or "tot lot, "so-called~~³ which is maintained by the authority of the City of Cambridge.

¹ It is clearer not to use the term being defined in the definition.

² This language is redundant because the term "public park" has already been defined to include tot-lots.

³ See fn. 2.

~~1. "No smoking" signs or signs bearing the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette within a red circle with a red line through it) shall be conspicuously posted at the entrance to each public park or tot lot subject to this chapter.⁴~~

⁴ This language is duplicative because 8.28.070(A) (1) and (2) would already require this automatically once 8.28.055 is enacted.

Sharon Town Bylaw: Outdoor smoking ban on town owned beaches, playgrounds, and parks

- First bylaw passed during a town meeting on May 8, 1995 (vote: 196 to 149)
 - See Attached Article 7 for details
 - First community in the state to ban outdoor smoking
 - State attorney general approved the ban.
- Initially, this proposal was presented to the Board of Health/Board of Selectman (Spring 1994) as an extension to their smoking regulations in restaurants, but the Board did not pursue it.
 - Dana Bottorff (town resident) brought this as a town warrant to the town meeting.
- There was one attempt at repealing the bylaw at an October 30, 1995 town meeting. Estimated vote of 670 to 470 to affirm the ban, so the ban was NOT repealed.
- There have not been problems with enforcement. There have not been any citations.
 - Anecdotally, people said the beaches seemed to be much cleaner.

Pros Arguments used in Sharon:

- The ban reduces ETS for children and adults (i.e. when person on the next blanket is smoking)
- The toxic effects of sidestream smoke are an issue of public health, not civil rights.
- These are common places. In Sharon, smoking is allowed if you just cross the beach and smoke in the parking lot.
- This is not a ban on privately-owned areas.
- When going somewhere to seek fresh air, people shouldn't have to inhale secondhand smoke especially in open areas supported by tax payer's dollars. (paraphrase from D. Bottorff, 1995)
- ETS is a Nuisance: similar to bans/unacceptability of alcohol, loud music, and the shouting of obscenities in public places.
- It prevents children from finding cigarette butts and putting the butts in their mouth.
- Setting example for children
- Many professional sports areas have banned smoking (Smoking is not allowed in Foxboro stadium; designated smoking areas located outside concourse.)

Con Arguments used in Sharon:

- Outdoors, how can ETS contaminate you any more than cars or fireplaces?
- Smoker's rights.....the ban is ridiculous, stupid etc.
- National Smokers' Alliance argued that Sharon's ban exemplifies "lifestyle police" issue.
- On Sharon beaches, lifeguards are supposed to report smokers. They have to concentrate on swimmers, little time for scanning beach for smokers.
- There was fear that the Police dept. would not enforce the bylaw—BUT they are professional police officers and should enforce this like anything else.
- If butts are the problem, then just enforce/strengthen litter laws

Additional info:

- In Sharon, the beach is limited to town residents, so this may have made it easier. Comparatively, Rockport tried, but their beaches draw people from all over—different enforcement issues.
- Davis, CA: One can smoke in public parks as long as they keep walking (cited in the Sun Chronicle, June 29, 1995) (Can't smoke within 20 feet of a building's entrance)

**TOWN CLERK**

SHARON, MASSACHUSETTS 02067

FILE COPY

IRLEY S. DAVENPORT, CMC/AAE
TOWN CLERK
TELEPHONE (617) 784-1505
FAX (617) 784-1503

MARLENE B. CHUSED
ASSISTANT TOWN CLERK

**TAKEN FROM THE MINUTES OF THE
ANNUAL TOWN MEETING - MAY 8, 1995**

ARTICLE 7.

VOTED: That the Town amend the General By-Laws, Article 10, Police Regulations of the Town of Sharon by adding thereto the following new article at the end thereof:

WHEREAS, the U.S. Environmental Protection Agency has determined that secondhand tobacco smoke is a Class A carcinogen, and more than two dozen international studies have determined secondhand smoke is a health hazard to nonsmokers;

WHEREAS, respiratory illnesses - most notably asthma - have risen dramatically among the general population, and most sharply among small children;

WHEREAS, the Town of Sharon has existing ordinances to protect public health and safety in outdoor public areas, i.e. prohibitions on alcoholic beverages and glass containers on the beaches at Lake Massapoag;

WHEREAS, the Town of Sharon has recognized its role in protecting the health of the general public from the hazards of secondhand smoke by passage of 1994 Board of Health regulations restricting tobacco use in indoor areas,

THEREFORE, the smoking of tobacco products at public playgrounds and the public beaches at Lake Massapoag is banned. This Article shall be enforced by the Board of Health and shall become effective fifteen (15) days after adoption hereof by Town Meeting.

Votes in the affirmative 196, votes in the negative 149. A standing vote.

Attest:

Shirley S. Davenport
Shirley S. Davenport
Sharon Town Clerk

City of Cambridge

The Ordinance Committee held a public hearing on March 18, 1998, beginning at 5:35 p.m. in the Sullivan Chamber for the purpose of considering a proposed amendment to the Municipal Code to prohibit smoking in parks. Attachment A

Present at the hearing were Councillor Henrietta Davis, Chair of the Committee, Kathleen L. Born, Mayor Francis H. Duehay, Councillor Sheila T. Russell, Councillor Timothy J. Toomey, Jr., Councillor Katherine Triantafillou, and City Clerk D. Margaret Drury. Also present were Arthur Goldberg, Supervising Legal Counsel, City Solicitor's Office; Harold Cox, Chief Public Health Officer; Eileen Sullivan, Tobacco Control, Public Health Department; Dorothy Coven, Tobacco Control, Public Health Department; Lieutenant Steve Williams, Cambridge Police Department; Paul Ryder, Recreation Director, Department of Human Services; and Andrew Spooner, Youth Division, Department of Human Services.

Councillor Davis convened the hearing and explained the purpose. She requested those present to introduce themselves and invited Councillor Toomey, who introduced the proposed amendments into the City Council by his order of January 12, 1998, to make a presentation.

Councillor Toomey stated that smoking is an enormous health issue. Evidence of the severity of the health problems created by smoking increases daily. It is also a children's issue. If children do not see adults smoking, they are less likely to smoke. It is also a litter issue. Think of how often we see our parks and tot lots littered with cigarette butts. For all of these reasons, he is proposing that the ordinance be amended to prohibit smoking in parks and tot lots.

Mayor Duehay asked if there were other communities that have done this in Massachusetts.

Councillor Toomey stated that Sharon has such restrictions.

Eileen Sullivan, Tobacco Control, Public Health Department, stated that she believes there are up to a dozen United States towns and cities which have done this.

Harold Cox stated that his remarks are not testimony in support or opposition; rather he is raising a couple of concerns. Smoking as an issue is very important to the public health of Cambridge. He has spent most of his time on issues of smoking indoors which raise second-hand smoke issues. Anything that puts restrictions on smoking is generally good. Councillor Toomey's comment about children seeing adults as role models highlights a significant issue.

Mr. Cox went on to urge some consideration of what enforcement would look like before enacting the ordinance. He also stated that the ordinance needs attention in the area of fines.

Committee Report #1

Cal. 13
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Communication was received from D. Margaret Drury, transmitting a report from Councillor Henrietta Davis, Chair of the Ordinance Committee, for a meeting held on March 18, 1998 for the purpose of considering a proposed amendment to the Municipal Code to prohibit smoking in parks.

4/13/98

No Action Taken

4/27/98

Passed to be Ordained

9-0-0.

In City Council April 6, 1998.

Report Accepted

PLACED ON FILE

Passed to a 2nd Reading
as amended.