



CAMBRIDGE CITY COUNCIL

Craig A. Kelley
City Councilor

November 27, 2013

To: Donna P. Lopez, City Clerk

From: Councilor Craig Kelley *CK/Kmc*

Please place the attached document on the Communications and Reports from City Officers for the December 2, 2013 City Council Meeting Agenda.

Thank you.

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**Chapter 8.28 - RESTRICTIONS ON YOUTH ACCESS TO TOBACCO PRODUCTS AND ON SMOKING
IN WORKPLACES AND PUBLIC PLACES**

Sections:

- 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 Penalties
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- 8.28.100 - Violations and Penalties
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- 8.28.160 - 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 youth 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.

(Ord. 1265. Repealed & Replaced. 06/09/2003)

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)~~ twenty-one (21).

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed medical provider or a product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, electronic nicotine delivery systems such as "e-cigarettes."

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.

(Ord. 1265, Repealed & Replaced. 06/09/2003)

8.28.030 - Access of minors to tobacco products.

A.

Sales to minors prohibited:

1.

No person shall sell tobacco or nicotine deliver products or permit tobacco or nicotine delivery 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 or nicotine delivery 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." "The minimum sales age for tobacco and nicotine delivery products in Cambridge is twenty-one (21) years-old."~~ 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~~ twenty-one (21) 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 or nicotine delivery 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 or nicotine delivery products 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 nicotine

delivery products or any coupons or vouchers for free tobacco or nicotine delivery products, to any person for any promotional or other commercial purposes.

D.

Packaging. Sale or distribution of single cigarettes or any tobacco or nicotine delivery 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~~ twenty-one (1821) 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~~ twenty-one (1821) years of age is present, or permitted to enter, at any time.

(Ord. 1265. Repealed & Replaced. 06/09/2003)

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 therefore, in writing. The Commissioner of Inspectional Services, after a hearing, may suspend the tobacco sales permit for up to four weeks. All tobacco and nicotine delivery 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 and nicotine delivery products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco and nicotine delivery 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.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

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:

Agent or Business Agent: *An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.*

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, with or without compensation.*

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.*

Private Club: *A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If a private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined by M.G.L. Ch. 138, Sec. 12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority*

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

Workplace: *Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer. Workplace includes hallways, stairwells, lobbies, elevators and restrooms.*

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.060 - Prohibition of Smoking in Workplaces

A.

Smoking is prohibited in all Workplaces, including private clubs.

B.

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.

C.

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

(Ord. 1265, Repealed & Replaced, 06/09/2003)

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 *within a twenty-four month period from the first 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 *request that the Cambridge Public Health Department initiate an investigation*.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.080 - Definitions for Prohibition 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:

Agent or Business Agent: *An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.*

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 (*with or without windows*) from the floor to the ceiling and enclosed by doors. An enclosed area may include, but is not limited to, offices, rooms, and halls.

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, facility or vehicle owned, leased, operated or occupied by the municipality, including public parks, school buildings and 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.

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: *healthcare facilities, malls, municipal facilities, public transportation vehicles, retail food stores, retail stores, educational facilities, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies and restrooms, auditoriums and any rooms or halls when used for a public meeting, public areas of banks and automatic banking lobbies, common areas of residential buildings, public restrooms, lobbies, staircases, waiting rooms, halls, exits, entrance ways, elevators accessible to the public and licensed child-care locations.*

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, vaporizing, burning or carrying any lighted tobacco or nicotine delivery product in any manner or in any form.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.090 - Prohibition of Smoking in Public Places

A.

Smoking Prohibited:

No person shall smoke nor shall any person be permitted to smoke in any *public place or municipal facility*.

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; or otherwise prohibited by regulation, rule, or policy.

(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. *Hotel and motel rooms rented to guests that are designated as "smoking rooms" may comprise no more than 25% of all rooms, leaving at least 75% smoke free at all times. A room so assigned shall have signs posted indicating that smoking is prohibited therein and shall have self-closing doors. No change in room designation shall take place without prior written approval by the Cambridge Public Health Department;*

(4)

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

(5)

Smokeshops provided such establishments prohibit entry to persons under the age of eighteen twenty-one (1821) at all times, and that such establishments conspicuously post signs at all entrances that warn patrons of the dangers of environmental tobacco smoke;

(6)

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

(7)

Religious ceremonies where smoking is part of the ritual;

(8)

The Middlesex County Jail/House of Corrections or places of incarceration/detention.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

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 dollars (\$50) for a second offense and one hundred dollars (\$100) for a third or subsequent offense *within a twenty-four month period from the first 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 *request that the Cambridge Public Health Department initiate an investigation*.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.110 - Definitions for Prohibition 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

Enclosed Area: A space bounded by walls (*with or without windows*) from the floor to the ceiling and enclosed by doors. An enclosed area may include, but is not limited to, offices, rooms, and halls.

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. *including but not limited to any coffee shop, cafeteria, sandwich shop, private and public school cafeteria, which gives or offer food for sale to the public, guests, or employees for on-premises consumption. This includes those establishments that possess 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*

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, vaporizing, burning or carrying any lighted tobacco or nicotine delivery product in any manner or in any form.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.120 - Prohibition of 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 circumstance s:

(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. *One side of said areas may adjoin the building, provided that the outdoor space and the indoor space are separated by a solid wall and/or self-closing doors such that smoke cannot enter the indoor space at any time.*

(Ord. 1265. Repealed & Replaced. 06/09/2003)

8.28.130 - Violations and Penalties

A.

Any person who violates this chapter by 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 *within a twenty-four month period from the first offense.* Each day a violation occurs will be considered a separate offense.

B.

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.

C.

Any citizen who desires to register a complaint under this section may *request that the Cambridge Public Health Department initiate an investigation.*

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.140 - Invalidity of Provisions

In the event that any one or more of the phrases, sentences, clauses, or paragraphs contained in this Ordinance shall be declared invalid by the final and unappealable order, decree or judgment of a court of competent jurisdiction, this Ordinance shall be construed as if it did not contain such phrases, sentences, clauses, or paragraphs

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.150 - Conflict with Other Laws and Regulations

Notwithstanding the provisions of the foregoing ordinance, nothing in this ordinance 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 regulations.

(Ord. 1265, Repealed & Replaced, 06/09/2003)

8.28.160 - Implementation

This revised ordinance will become effective October 1, 2003. An advisory committee will be created by the City Manager to develop recommendations for implementing and monitoring the tobacco ordinance. This committee will be composed of the following City staff: Deputy City Manager, Director of Economic Development at the Community Development Department, Police Commissioner, Commissioner of Inspectional Services, Chairman of the License Commission, Chief Public Health Officer, and City Solicitor. Additionally, there will be four members from the hospitality industry, including: Director of Tourism of the Cambridge Office for Tourism, one large business representative, one small business representative, and one alternate. The chair of the City Council's Economic Development Committee will also participate in the discussions. This committee will be co-chaired by the Deputy City Manager and the Chief Public Health Officer; will stay in effect for one year after passage of the ordinance; and will issue a implementation status report to the City Council at the end of the term.

(Ord. 1265, Repealed & Replaced, 06/09/2003)