



December 9, 2014

Honorable Members of the Cambridge City Council,

The proposed amendments to the Tobacco Ordinance (Chapter 8.28, *Regulation on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places*) that accompany this letter are the result of extensive review by successive advisory committees that engaged both municipal and public stakeholders. Cambridge was an early statewide leader in 2003 when the City Council adopted this ordinance on public use and purchase of tobacco. Although Cambridge helped to create momentum towards stricter tobacco purchase and use policies in Massachusetts, the landscape of tobacco regulation has changed quickly in the last several years. The changes presented here represent a significant update of local tobacco policy that address several areas of concern, including the age of legal tobacco purchase, youth access to e-cigarettes and smoking in those outdoor areas accessible to the public that are more likely to generate problematic second-hand smoke exposures. Several other changes are included as well and all proposed amendments are specified in the attached "*Summary of TAC Recommendations to the City Council*" with a further rationale for these amendments provided.

This package of amendments includes several provisions that are specifically intended to strengthen our Ordinance in order to curtail the disturbing increase in tobacco use among teens (after years of progress). These changes include: higher age of purchase to 21, ban on single-serve cigars, restrictions on where flavored tobacco may be sold, and a full prohibition on the sale of blunt wraps, commercial Roll-Your-Own machines, and the use of tobacco vending machines. The tobacco industry's youth-targeting strategies are widely recognized, but because the US Food and Drug Administration (FDA) is limited in its regulatory authority over tobacco marketing strategies and is not currently authorized to regulate e-cigarettes at all, there has been no coordinated national regulatory response to this significant threat to the lifetime health of younger people. Many of these concerns are addressed in the proposed amendments, following the contours of policies already widely adopted across the state and the country. These policies have broad support because they are intended to provide a counter-weight to a cynical "youth strategy" and are not likely to impact adults beyond minor inconvenience.

Most of the remaining changes proposed in this package target the impact of smoking on residents and visitors enjoying public places in the Cambridge. In the attached summary and the two attached maps we are submitting two options (A and B) for the consideration of the Council. **Option A**, a city-wide ban on smoking in municipal open space and parks is an approach that has already been in full enforcement in many neighboring cities for years. Somerville has banned smoking all parks for over a decade and Boston adopted such a ban in the past few years, along with nearly two dozen other MA municipalities. **Option B** focuses on those municipal parks and open spaces where there is likely to be the greatest impact on non-smokers due to crowding and

## CAMBRIDGE PUBLIC HEALTH DEPARTMENT



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the nature of the activity (eating, participation in public events, and areas primarily used by young children). Because publically-accessible areas such as restaurant patios and municipal open space are shared resources, we cannot realistically expect to protect our residents, some with severe respiratory conditions, who are negatively impacted from second-hand smoke while still leaving unaltered the right to smoke in such public venues. These recommended changes would not be among the strictest set of smoking and tobacco sales policies in the state, but would bring Cambridge back to a place of leadership in the Commonwealth on these issues. These changes are consistent with recommendations from widely respected municipal organizations such as the Massachusetts Municipal Association.

The specific scope and intent of the proposed amendments merits further clarification. The following detail should help avoid confusion on the intended impact of these changes.

- The amendments would **prohibit e-cigarettes sales to minors**, but would not prohibit their use in workplaces, public places or public parks.
- Although the City of Cambridge does not control smoking policy on Cambridge Housing Authority properties, it is important to note that many CHA housing sites have designated outdoor areas where smoking is allowed.
- Smoking continues to be permitted on public sidewalks, plazas urban and other “hardscapes” under both a full parks ban (Option A) and a partial ban ( Option B).
- Flavored tobacco products will continue to be permitted for sale in establishments that primarily sell tobacco products and accessories (Smokeshops as defined in the ordinance)
- No-smoking buffers around tot lots (both fenced and unfenced) will be encouraged with signage and outreach efforts promoting reasonable and commonsense smoking behaviors.

Best regards,

A handwritten signature in black ink, appearing to read "Sam Lipson".

Sam Lipson  
Director of Environmental Health

cc: Claude-Alix Jacob, Chief Public Health Officer

Attachments:

Summary of TAC recommendations to the City Council  
Smoking in Parks maps for full ban (Option A) and partial ban (Option B)

December 15, 2014

## OVERVIEW OF CURRENT TOBACCO ORDINANCE

- The current Tobacco ordinance was enacted in 2003 after a long stakeholder process. Previous versions of the local smoking ordinance had established smoking and non-smoking areas within establishments.
- This was part of a movement to protect workers and customers from second-hand smoke. The basis for passing these restrictions was closely tied to evidence of harm from ETS exposures. These new laws were enacted locally before the state chose to act.
- **Chapter 8.28: Restrictions on Youth Access and Sale of Tobacco Products and on Smoking in Workplaces and Public Places**
  - Youth Access and Sale of Tobacco Products
  - Smoking in the Workplace
  - Prohibition of Smoking in Public Places

## YOUTH ACCESS AND PERMITTING OF VENDORS

- Controls on tobacco vending machines
- Posted signage prohibiting sales to minors
- Tobacco sales permit required
- No Free Distribution
- No post-mfg packaging or pkgs of less than 20 cigarettes
- No Self-service displays (except when entry to minors is enforced)
- Vending machines allowed (direct view and control of staff, signage, no entry of minors)

## SMOKING WORKPLACES

- Smoking prohibited in all workplaces, including private clubs
- This applies only to “any enclosed area of a structure or portion thereof”

## SMOKING IN PUBLIC PLACES

- Applies to all indoor locations where the public is invited or permitted (places of business and public transportation)
- Exceptions:
  - Private residences (unless used as a daycare)
  - Nursing homes (requires private room and separate ventilation)

- Inns, hotels, motels, bed-and-breakfast lodgings **ONLY IF DESIGNATED AS SMOKING and no more than 25% of all rooms available**
- Smokeshops if minors are prohibited entry and with proper signage
- Performers on stage
- Religious ceremonies
- Houses of correction, detention or incarceration

#### SPECIAL PROVISION FOR SMOKING IN RESTAURANTS

- Prohibited in all indoor areas. Allow in patios if all windows are closed and doors are self-closing.

#### **SUMMARY OF PROPOSED AMENDMENTS**

- These amendments would **prohibit e-cigarettes sales to minors**, but would not prohibit their use in workplaces, public places or public parks.
  - Though the City does not control smoking policy on Cambridge Housing Authority properties, it is important to note that many sites have designated outdoor areas where smoking is allowed.
  - Smoking on public sidewalks, plazas and other “hardscapes” are not included in either version of item 1) below.
- 1) Smoking prohibition in parks and municipal open space (OPTIONS A & B):
    - A. Prohibition on smoking in all parks and municipal open space (see Option A map); or
    - B. Prohibition on smoking in fenced-in tot lots, parks smaller than 15,000 s.f., all public open space during City-permitted events (see Option B map).
  - 2) Prohibition on smoking in all room at inns, hotels, motels and B-and-B establishments
  - 3) Prohibition on smoking in all outdoor seating areas that serve restaurants and bars where food is served
  - 4) Prohibition on smoking in all room at inns, hotels, motels and bed-and-breakfast establishments
  - 5) Regulation of all e-cigarette and other NDP sales under same restrictions as combustible tobacco
  - 6) Prohibition on tobacco or nicotine delivery product (NDPs) sales in all healthcare institutions (including pharmacies & drug stores, clinics or health centers)
  - 7) Prohibition on sale of tobacco or NDPs to anyone under the age of 21
  - 8) Restrictions on pricing and packaging for cigars
  - 9) No sales of blunt wraps
  - 10) No Commercial Roll-Your-Own machines
  - 11) No sale of flavored tobacco outside of a “retail tobacco store”
  - 12) Prohibition of all cigarette vending machines (requires repeal of Chapter 8.29)
  - 13) Update penalties and vendor permit suspension rules to match other MA communities

## BACKGROUND INFORMATION AND RATIONALE FOR PROPOSED AMENDMENTS

### 1) Smoking in Parks and Open Spaces (Option A)

- Public expectations about exposure to second-hand cigarette smoke have shifted over the past decade as rules protecting non-smokers in public places have come into effect.
- The City of Cambridge is the second most densely populated city in Massachusetts and among the densest cities in the US. Cambridge residents rely on city parks and playfields as safe and healthy places to participate in athletics or just to take a walk. This is a central feature of the public health campaign to increase physical activity among residents (*Cambridge Moves!*).
- Many of the City's smaller parks are tightly shoe-horned into dense neighborhoods, raising the likelihood that smoke will affect others using the park (many of them children and toddlers) and that smoke may migrate onto abutting properties.
- The use of public open spaces and parks should reflect the importance of these public spaces to the majority of residents. Residents have a reasonable expectation that they can engage in outdoor activities without navigating cigarette smoke and a fair assessment of the likelihood of harmful exposures in larger parks and athletic fields when there are no organized athletic events taking place.
- Since this provision will be primarily complaint-driven it is likely to become an issue only when smoking is disruptive to others when common sense courtesies are not observed.

### 2) Smoking prohibition in outdoor seating areas where food is served

- Smoking in crowded seating areas used by restaurants are disruptive to other diners, are similar to crowded indoor areas.
- Outdoor seating areas that allow smoking cause negative impacts on residents who abut these seating areas. The City has received many complaints about these sorts of exposures.
- The City of Cambridge already prohibits smoking on seating areas on public sidewalks, but not in outdoor seating areas on private property adjacent to bars and restaurants.
- Boston Public Health Commission has already prohibited smoking in outdoor seating areas where food is served since 2008.

### 3) Smoking prohibition in hotels, inns, and bed-and-breakfast establishments

- The effects of lingering smoke that has been adsorbed onto upholstered furniture, rugs, drapes, and bedspreads does result in "third-hand" exposures (via off-gassing of volatile chemicals from those materials).
- For some guests these exposures can trigger sensitivity reactions.

- We have not discovered any hotels, inns or bed-and-breakfast establishments that allow smoking at the current time, so the impact on commerce is expected to be neutral.
- Boston Public Health Commission has already prohibited smoking in guest rooms and common areas of hotels, inns and bed-and-breakfast establishments since 2008.

4) e-Cigarette sales prohibition to minors

- Current ordinance language does not prevent vendors from selling e-cigarettes and other Nicotine Delivery Products (NDPs) to minors - customers who are younger than 21 years of age.
- Younger customers have been aggressively targeted by large tobacco company marketing campaigns and there is alarming evidence that e-cigarette use among younger demographics has risen steeply in the past few years.
- Since they are not FDA regulated at the current time there is little assurance of the amounts of nicotine and other volatile chemicals in the solutions used within these devices.

5) Ban on all tobacco and NDP sales in pharmacies

- At least 56 Massachusetts municipalities have already adopted a prohibition on sales of tobacco and/or non-prescription nicotine delivery products [from Mass. Municipal Assn]
- Tobacco products should not be sold in establishments that employ clinically-trained medical professionals (pharmacists and primary care providers) and that frequently now offer an expanded set of healthcare services directly to the public (e.g. primary care visits, flu shots, distribution of pharmaceuticals).
- Many large pharmacy chains have already made these adjustments to local tobacco sales bans and one national chain (CVS) has now banned tobacco sales in all of their stores nationwide.
- A survey has determined that all but one of the local independent pharmacies have already chosen not to sell tobacco products.

6) Raising the legal age of tobacco or nicotine-delivery product (NDP) purchase to 21 years old

Though data is limited so far, communities that have already adopted a higher age for purchasing tobacco and NDPs have observed sharp drops in teen smoking rates (Needham, MA was among the first nationally). Published research has demonstrated the connection between teen access to tobacco and the age at which tobacco can be purchased. These studies indicate that high school students rely on friends who are just over the legal age (19 and 20 years of age) for their own access.

7) Pricing and packaging restrictions on cigars

Under-pricing of cigars is one of the strategies employed by tobacco companies to capture younger smokers. This approach includes the sale of single cigars at low prices as an

enticement. 50 Massachusetts municipalities (10 cities) require minimum pricing on cigars. Statewide youth surveys find youth are using cheap, flavored single cigars more than cigarettes. Minimum pricing thwarts youth initiation to tobacco. A quarter of the state's population lives in municipalities with this policy, including Boston. Unlikely to be in the proposed FDA regulation.

8) Prohibition on sale of blunt wraps

A blunt wrap is a sheet of reconstituted tobacco, usually flavored, used primarily to make marijuana cigarettes. 62 municipalities (16 cities) ban the sale of blunt wraps. Boston has since February 2009. Police departments usually support this policy because of the product's connection to illegal drug use. The Massachusetts Supreme Judicial Court sided with Boston when sued by blunt wrap manufacturers. The federal government is prohibited from banning tobacco products so this will not be in the proposed FDA regulation.

9) Prohibition on Commercial Roll-Your-Own Machines

81 municipalities (17 cities) ban roll-your-own (RYO) machines in commercial and/or private club locations (sale of RYO machines for in-home use is permitted). The deep discounted price of these RYO cigarettes undercut the long-held proven strategy that higher prices discourage smoking, especially among youth. Federal law bans commercial use of RYO except in private clubs. The proposed policy eliminates this loophole, making for a "level playing field" among all cigarette vendors in Cambridge.

10) Restrictions on sale of flavored tobacco products

This provision is not a ban on the sale of flavored tobacco products. It allows sales in adult establishments such as retail tobacco stores and smoking bars.

Menthol and other mint-flavored tobacco products do not fall under this regulation.

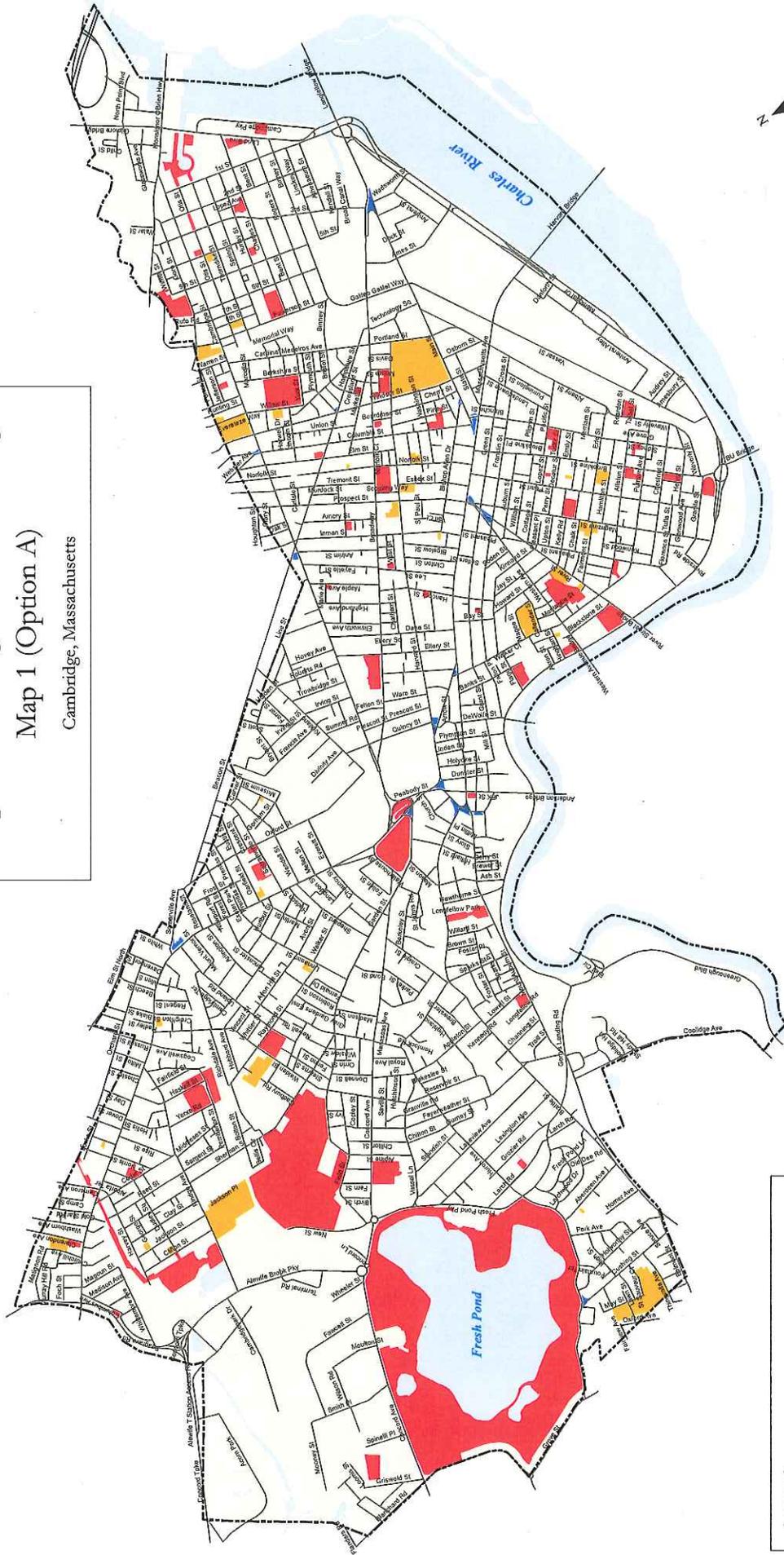
Flavored tobacco products are considered to be "starter" products by the U.S Food and Drug Administration and U.S Surgeon General that aid in the establishment of smoking patterns that can lead to a long-term addiction.

11) Prohibition of all cigarette vending machines (requires repeal of Chapter 8.29)

At the current time there are no cigarette vending machines. This amendment would establish a permanent prohibition on such devices, since they have always posed a substantial youth-access enforcement challenge. This provision is recommended by the MMA and is matched by vending machine bans in many other MA communities.

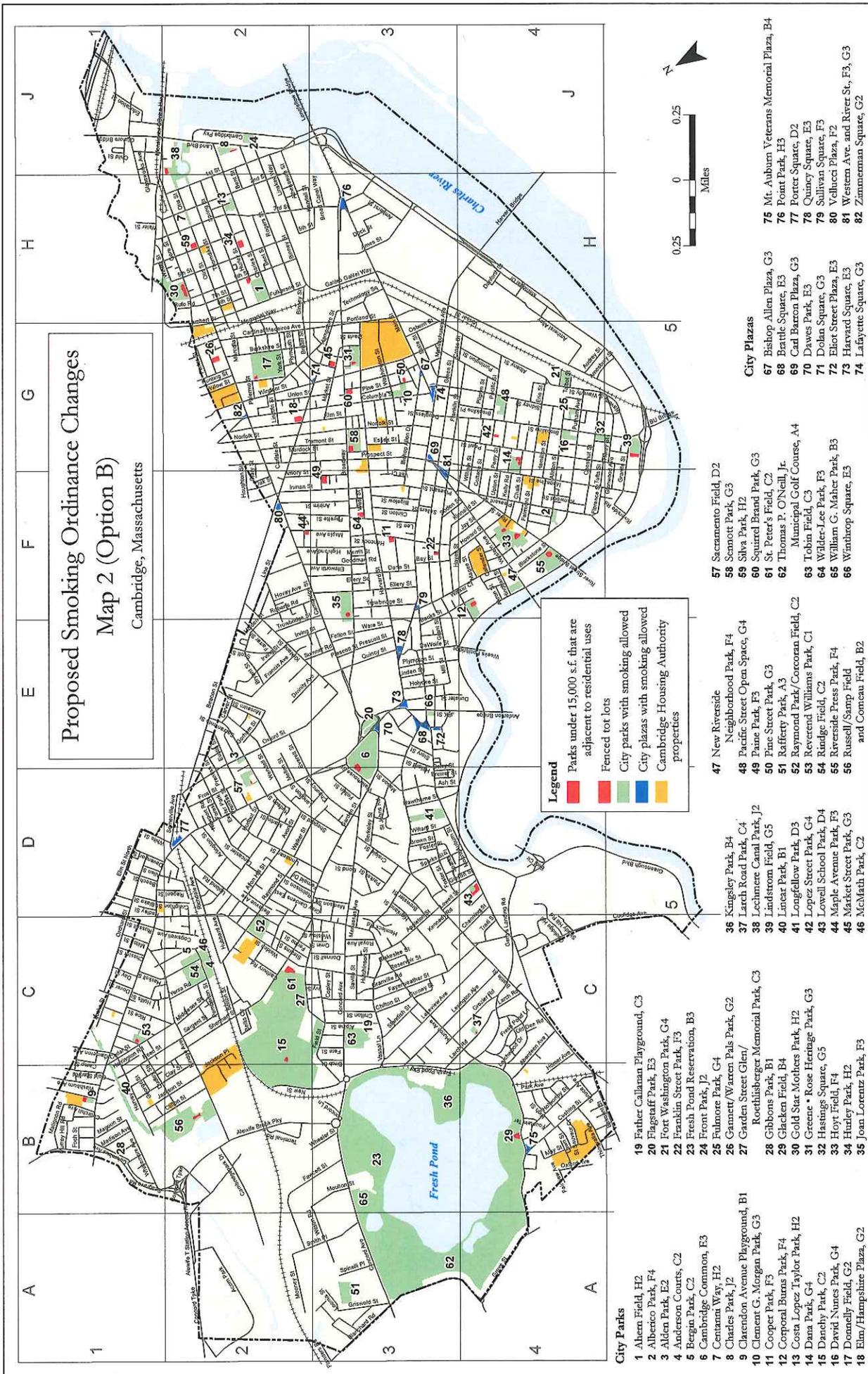
12) Update penalties and permit suspension rules (tobacco vendors) to match other MA communities. Consistent penalties and suspension rules across municipalities.

Proposed Smoking Ordinance Changes  
Map 1 (Option A)  
Cambridge, Massachusetts



- Legend**
- City parks with smoking prohibited
  - City plazas with smoking allowed
  - Cambridge Housing Authority properties

# Proposed Smoking Ordinance Changes Map 2 (Option B) Cambridge, Massachusetts



- City Parks**
- 1 Alcorn Field, H2
  - 2 Alberico Park, F4
  - 3 Alden Park, E2
  - 4 Anderson Courts, C2
  - 5 Begun Park, C2
  - 6 Cambridge Common, E3
  - 7 Centanni Way, H2
  - 8 Charndon Avenue Playground, B1
  - 9 Clement G. Morgan Park, G3
  - 10 Cooper Park, F3
  - 11 Corporal Burns Park, F4
  - 12 Costa Lopez Taylor Park, H2
  - 13 Dana Park, G4
  - 14 Dancy Park, C2
  - 15 David Nunes Park, G4
  - 16 Donnelly Field, G2
  - 17 Elm/Hampshire Plaza, G2
  - 19 Father Callahan Playground, C3
  - 20 Flagstaff Park, E3
  - 21 Fort Washington Park, G4
  - 22 Franklin Street Park, F3
  - 23 Fresh Pond Reservation, B3
  - 24 Front Park, J2
  - 25 Fulmore Park, G4
  - 26 Gannett/Warren Pals Park, G2
  - 27 Garden Street Glen/Rothlisberger Memorial Park, C3
  - 28 Gibbons Park, B1
  - 29 Chicken Field, B4
  - 30 Gold Star Mothers Park, H2
  - 31 Greene • Rose Heritage Park, G3
  - 32 Hastings Square, G5
  - 33 Hoyt Field, F4
  - 34 Hudley Park, H2
  - 35 Joan Lorenz Park, F3
  - 36 Kingsley Park, B4
  - 37 Larch Road Park, C4
  - 38 Lechmere Canal Park, J2
  - 39 Lindstrom Field, G5
  - 40 Linear Park, B1
  - 41 Longfellow Park, D3
  - 42 Lopez Street Park, G4
  - 43 Lowell School Park, D4
  - 44 Maple Avenue Park, F3
  - 45 Market Street Park, G3
  - 46 McMath Park, C2
  - 47 New Riverside Neighborhood Park, F4
  - 48 Pacific Street Open Space, G4
  - 49 Paue Park, F3
  - 50 Pine Street Park, G3
  - 51 Rafferty Park, A3
  - 52 Raymond Park/Corcoran Field, C2
  - 53 Reverend Williams Park, C1
  - 54 Rindge Field, C2
  - 55 Riverside Press Park, F4
  - 56 Russell/Samp Field and Concau Field, B2
  - 57 Sacramento Field, D2
  - 58 Samott Park, G3
  - 59 Silva Park, H2
  - 60 Squirrel Brand Park, G3
  - 61 St. Peter's Field, C2
  - 62 Thomas P. O'Neill, Jr. Municipal Golf Course, A4
  - 63 Tobin Field, C3
  - 64 Wilder-Lee Park, F3
  - 65 William G. Maher Park, B3
  - 66 Winthrop Square, E3
- City Plazas**
- 67 Bishop Allen Plaza, G3
  - 68 Brattle Square, E3
  - 69 Carl Barron Plaza, G3
  - 70 Davies Park, E3
  - 71 Dolan Square, G3
  - 72 Eliot Street Plaza, E3
  - 73 Harvard Square, E3
  - 74 Lafayette Square, G2
  - 75 Mt. Auburn Veterans Memorial Plaza, B4
  - 76 Point Park, H3
  - 77 Porter Square, D2
  - 78 Quincy Square, E3
  - 79 Sullivan Square, E3
  - 80 Valucci Plaza, F2
  - 81 Western Ave. and River St., F3, G3
  - 82 Zimmerman Square, G2
- Legend**
- Parks under 15,000 s.f. that are adjacent to residential uses
  - Fenced lots
  - City parks with smoking allowed
  - City plazas with smoking allowed
  - Cambridge Housing Authority properties
- Scale:** 0 to 0.25 Miles
- Map prepared by Brendan Monroe on December 4, 2014. GIS: C:\Projects\GIS\PublicHealth\ParksSmokingOptionB\Index.mxd**

OPTION A

CHAPTER 8.28

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

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions for Youth Access of Minors to Access and Sale of Tobacco Products
- 8.28.030 Youth Access of Minors to and Sale of 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 Prohibition on Smoking in Public Places
- 8:28.090 Prohibition of Smoking in Public Places
- 8:28.100 Enforcement and Violations
- 8:28.110 Definitions for Prohibition on Smoking in Restaurants
- 8:28.120 Prohibition of Smoking in Restaurants
- 8:28.130 Enforcement and Violations
- 8:28.140 Invalidity of Provisions
- 8.28.150 Conflict with Other laws or Regulations
- 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 minors people under twenty-one (21) years of age;
- 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 Youth Access of Minors to and Sale of Tobacco Products:**

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

**Blunt wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**Cambridge Public Health Department:** the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201 Chapter 147 of the Acts of 1996.

**Characterizing Flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

**City:** The City of Cambridge.

**Commercial Roll-Your-Own (RYO) machine:** A mechanical device, by whatever manufacturer made and by whatever name known, located in a business or used for sale or distribution of tobacco that is designed to roll and wrap tobacco into products. RYO machines located in a private home, used for personal consumption, are not Commercial Roll-Your-Own machines.

**Component Part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

**Distinguishable:** Perceivable by either the sense of smell or taste.

**E-Cigarette:** Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**Flavored Tobacco Product:** Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

**Health Care Institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-

alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

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 enforcement of state 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).

**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, 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.

**Retail Tobacco Store:** An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Cambridge Public Health Department Commission (dba/Cambridge Public Health Department).

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.

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

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

Health care institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

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

**Youth:** Any individual who is under the age of twenty-one (21) years.

**8.28.030 Youth Access of Minors and Sale of Tobacco Products:**

**A. Prohibition Against Sales of Tobacco to Youths~~minors prohibited:~~**

1. No person shall sell tobacco products or permit tobacco products to be sold to a ~~minor~~youth or, not being the ~~minor~~youth's parent or guardian, no person shall give tobacco products to a ~~minor~~youth.
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 "The City of Cambridge, by Chapter 8.28 of the Cambridge Municipal Code, prohibits the sale of tobacco products to any person under the age of twenty-one (21) years." Said notice shall be 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)~~twenty-one (21) years of age. No such verification is required for any person over the age of 26.

**B. Prohibition Against the Sale of Tobacco Products by Health Care Institutions**

No health care institution located in the City of Cambridge shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

**CB. Tobacco sales permit:**

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by the Inspectional Services Department.
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 prohibiting the sale of tobacco products to youths 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 laws.
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.

**DC. 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.

**ED. 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.

**FE. 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)~~ twenty-one (21) years of age is present, or permitted to enter, at any time.

**GF. 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.~~

**H: Cigar Sales Regulated:**

~~1. No retailer, retail establishment, or other individual or entity shall sell or distribute or~~  
~~2. cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.~~

This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City.
- c. ~~R~~etail ~~T~~obacco ~~S~~tores.

**I: Prohibition on the Sale of Blunt Wraps:**

No person shall sell or distribute blunt wraps in the City.

**J: Commercial Roll-Your-Own Machines**

All commercial roll-your-own machines are prohibited.

**K: Sale of Flavored Tobacco Prohibited:**

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco to a consumer. This provision shall not apply to a retail tobacco store.

**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 inure 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 Cambridge Public Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services ~~may~~ shall suspend for seven (7) days a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed ~~two~~ three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall suspend a tobacco sales permit for thirty (30) days for a third or subsequent offense within the same twenty-four month period. 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 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 inure 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, in addition to the definitions in 8.28.020 above, 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 (with or without windows) from the floor to the ceiling and enclosed by doors and under a roof or ceiling. An enclosed area may include, but is not limited to, offices, rooms, and halls.

**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, burning or carrying any lighted tobacco product, cigarette, cigar, pipe tobacco, snuff, or tobacco in any manner or in any form, not including e-cigarettes.

**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.

**8.28.060 Prohibition of Smoking in Workplaces.**

- A. Smoking is prohibited in all ~~W~~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 Cambridge Public Health Department~~ may promulgate reasonable rules and regulations for the implementation of this chapter.

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

A. Any ~~establishment~~person who violates this chapter shall be subject to a fine in an amount of ~~twenty-five~~one hundred dollars (\$25100) for a first offense, ~~fiftytwo~~ hundred dollars (\$5200) for a second offense and ~~onethree~~ hundred dollars (\$4300) for a third or subsequent offense within a twenty-four month period from the first offense. Any private individual who violates this chapter shall be subject to a fine of one hundred dollars (\$100). 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 c.hap 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the ~~e~~City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; ~~and~~and employees of the License Commission, the Public 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.

III

**8.28.080 Definitions for Prohibition on Smoking in Public Places:**

For the purposes of this ordinance, in addition to the definitions in 8.28.020 and 8.28.050, 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 Facility:** Any building, or facility or vehicle owned, leased, operated or occupied by the municipality, including public parks, school buildings and grounds.

**Municipal Vehicle:** Any vehicle owned or leased by the municipality, and operated or occupied by employees, agents or contractors of the municipality.

**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.

**Designated Public park:** Any public outdoor playgrounds, fields, reservations, open space (excluding public streets and ways) tot lots, pocket parks and playgrounds, athletic 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 grounds 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, all enclosed areas of inns/hotels/motels lobbies and restrooms, including all guest rooms, 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, burning or carrying any lighted tobacco product in any manner or in any form.~~

## **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, municipal vehicle, or public park.

### **B. Election for coverage by private facilities:**

The owner, manager, or other person in charge of a building or facility not prohibited from allowing smoking by this ordinance or other laws 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 ordinance~~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 8.28.090~~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. 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;~~

~~(34) 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;

(45) Smokeshops 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 that warn patrons of the dangers of environmental tobacco smoke;

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

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

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

### **8.28.100. Violations and Penalties:**

A. Any person~~establishment~~ who violates this chapter shall be subject to a fine in an amount of ~~one hundred twenty-five~~ dollars (\$~~100~~25) for a first offense, ~~fifty~~\$200 dollars (\$~~5~~200) for a second offense and ~~one~~three hundred dollars (\$~~1~~300) for a third or subsequent offense within a twenty-four month period from the first offense. Any private individual who violates this chapter shall be subject to a fine of one hundred dollars (\$100). 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 c.hap-40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure 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 Public 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.

## **IV**

### **8.28.110 Definitions for Prohibition on Smoking in Restaurants**

For purposes of this ordinance, in addition to the definitions in 8.28.020, 8.28.050 and 8.28.080 above, 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 (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.

~~Restaurant Premises shall include all outdoor and sidewalk seating areas.~~ 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 pursuant to any other law.

~~**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.~~

## **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 ~~ordinance~~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. 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.~~

~~None~~

**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~~youth into an area restricted to ~~eighteen~~twenty-one and older shall be subject to a fine in an amount of ~~twenty-five~~one hundred dollars (\$~~25~~100) for a first offense, ~~fifty~~two hundred dollars (\$~~50~~200) for a second offense, ~~one~~three hundred dollars (\$~~100~~300) 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 inure 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 Public 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.

**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 judgement of a court of competent jurisdiction, this Ordinance shall be construed as if it did not contain such phrases, sentences, clauses, or paragraphs.

**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.

**~~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.~~

~~In City Council June 9, 2003.~~

~~Passed to be ordained as amended by a yea and nay vote:~~

~~Yeas 7; Nays 2; Absent 0.~~

~~Attest: D. Margaret Drury, City Clerk.~~

~~A true copy;~~

~~ATTEST:-~~

~~D. Margaret Drury  
City Clerk~~

**OPTION B**

**CHAPTER 8.28**

**Restrictions on Youth Access and Sale of Tobacco Products  
and on Smoking in Workplaces and Public Places**

- 8.28.010 Declaration of Legislative Findings
- 8.28.020 Definitions for Youth Access of Minors to Access and Sale of Tobacco Products
- 8.28.030 Youth Access of Minors to and Sale of 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 Prohibition on Smoking in Public Places
- ~~8.28.085 List of Public Park Restricted Areas~~
- 8:28.090 Prohibition of Smoking in Public Places
- 8:28.100 Enforcement and Violations
- 8:28.110 Definitions for Prohibition on Smoking in Restaurants
- 8:28.120 Prohibition of Smoking in Restaurants
- 8:28.130 Enforcement and Violations
- 8:28.140 Invalidity of Provisions
- 8.28.150 Conflict with Other laws or Regulations
- 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 ~~minors~~people under twenty-one (21) years of age;
- 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 Youth Access of Minors to and Sale of Tobacco Products:**

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

**Blunt wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**Cambridge Public Health Department:** the entity that provides public health services for the City of Cambridge, pursuant to St. 1976, c. 201 Chapter 147 of the Acts of 1996.

**Characterizing Flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

**City:** The City of Cambridge.

**Commercial Roll-Your-Own (RYO) machine:** A mechanical device, by whatever manufacturer made and by whatever name known, located in a business or used for sale or distribution of tobacco that is designed to roll and wrap tobacco into products. RYO machines located in a private home, used for personal consumption, are not Commercial Roll-Your-Own machines.

**Component Part:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**Constituent:** Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

**Distinguishable:** Perceivable by either the sense of smell or taste.

**E-Cigarette:** Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**Flavored Tobacco Product:** Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

**Health Care Institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-

alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

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 enforcement of state 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).

**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, 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.

**Retail Tobacco Store:** An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Cambridge Public Health Department Commission (dba/Cambridge Public Health Department).

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.

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

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

~~Health care institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care institution includes hospitals, stand-alone clinics, in-store clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.~~

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

**Youth:** Any individual who is under the age of twenty-one (21) years.

**8.28.030 Youth Access of Minors to and Sale of Tobacco Products:**

**A. Prohibition Against Sales of Tobacco to Youths~~minors prohibited:~~**

1. No person shall sell tobacco products or permit tobacco products to be sold to a ~~minor~~youth or, not being the ~~minor~~youth's parent or guardian, no person shall give tobacco products to a ~~minor~~youth.
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 "The City of Cambridge, by Chapter 8.28 of the Cambridge Municipal Code, prohibits the sale of tobacco products to any person under the age of twenty-one (21) years." Said notice shall be 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)~~twenty-one (21) years of age. No such verification is required for any person over the age of 26.

**B. Prohibition Against the Sale of Tobacco Products by Health Care Institutions**

No health care institution located in the City of Cambridge shall sell or cause to be sold tobacco products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

**CB. Tobacco sales permit:**

1. No person shall sell tobacco products within the City of Cambridge without first obtaining a tobacco sales permit issued by the Inspectional Services Department.
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 prohibiting the sale of tobacco products to youths 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 laws.
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.

**DC. 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.

**ED. 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.

**FE. 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)~~ twenty-one (21) years of age is present, or permitted to enter, at any time.

**GF. 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.~~

**H: Cigar Sales Regulated:**

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or  
2. cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the City.
- c. Retail Tobacco Stores.

**I: Prohibition on the Sale of Blunt Wraps:**

No person shall sell or distribute blunt wraps in the City.

**J: Commercial Roll-Your-Own Machines**

All commercial roll-your-own machines are prohibited.

**K: Sale of Flavored Tobacco Prohibited:**

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco to a consumer. This provision shall not apply to a retail tobacco store.

**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 inure 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 Cambridge Public Health Department and Inspectional Services Department or their designees.

B. The Commissioner of Inspectional Services ~~may~~shall suspend for seven (7) days a tobacco sales permit granted pursuant to this ordinance upon determination that a permit holder has committed ~~two~~three (3) violations within twenty-four months, calculated from the date of the first offense. The Commissioner of Inspectional Services shall suspend a tobacco sales permit for thirty (30) days for a third or subsequent offense within the same twenty-four month period. 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 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 inure 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, in addition to the definitions in 8.28.020 above, 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 (with or without windows) from the floor to the ceiling and enclosed by doors and under a roof or ceiling. An enclosed area may include, but is not limited to, offices, rooms, and halls.

**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, burning or carrying any lighted tobacco product, cigarette, cigar, pipe tobacco, snuff or tobacco in any manner or in any form, not including e-cigarettes.

**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.

**8.28.060 Prohibition of Smoking in Workplaces.**

- A. Smoking is prohibited in all ~~W~~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 Cambridge Public Health Department~~ may promulgate reasonable rules and regulations for the implementation of this chapter.

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

- A. Any ~~establishment~~person who violates this chapter shall be subject to a fine in an amount of ~~twenty-five~~one hundred dollars (\$25~~100~~) for a first offense, ~~fiftytwo~~ hundred dollars (\$5~~200~~) for a second offense and ~~one~~three hundred dollars (\$4~~300~~) for a third or subsequent offense within a twenty-four month period from the first offense. Any private individual who violates this chapter shall be subject to a fine of one hundred dollars (\$100). 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 c. ~~hap~~ 40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the ~~e~~City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; ~~and~~and employees of the License Commission, the Public 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.

III

**8.28.080 Definitions for Prohibition on Smoking in Public Places:**

For the purposes of this ordinance, in addition to the definitions in 8.28.020 and 8.28.050, 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 Facility:** Any building, or facility or vehicle owned, leased, operated or occupied by the municipality, including public parks, school buildings and grounds.

**Municipal Vehicle:** Any vehicle owned or leased by the municipality, and operated or occupied by employees, agents or contractors of the municipality.

**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.

**Designated Public park restricted area:** Any public outdoor parks of less than 15,000 square feet, fenced-in lot lots, and playgrounds, all public open space including athletic fields in use during City-permitted events, reservations and lot 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. See section 8.28.085 for a complete listing of public park restricted areas within the City.

**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, all enclosed areas of inns/hotels/motels lobbies and restrooms, including all guest rooms, 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, burning or carrying any lighted tobacco product in any manner or in any form.

#### **8.28.085 List of Public Park Restricted Areas**

Attached as Appendix A to this ordinance is a list of public park restricted areas.

### **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, municipal vehicle, or public park restricted area.

#### **B. Election for coverage by private facilities:**

The owner, manager, or other person in charge of a building or facility not prohibited from allowing smoking by this ordinance or other laws 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 ordinance~~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 8.28.090~~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. 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;~~

(34) 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;

(45) Smokeshops 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 that warn patrons of the dangers of environmental tobacco smoke;

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

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

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

#### **8.28.100. Violations and Penalties:**

A. Any person~~establishment~~ who violates this chapter shall be subject to a fine in an amount of ~~one hundredtwenty-five~~ dollars (\$~~10025~~) for a first offense, ~~fifty~~\$200 dollars (\$~~5200~~) for a second offense and ~~onethree~~ hundred dollars (\$~~1300~~) for a third or subsequent offense within a twenty-four month period from the first offense. Any private individual who violates this chapter shall be subject to a fine of one hundred dollars (\$100). 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 c.hap-40, sect. 21D. Any fines imposed under the provisions of this chapter shall inure 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 Public 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.

### IV

#### **8.28.110 Definitions for Prohibition on Smoking in Restaurants**

For purposes of this ordinance, in addition to the definitions in 8.28.020, 8.28.050 and 8.28.080 above, 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 (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.~~

~~Restaurant Premises shall include all outdoor or sidewalk seating areas. 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 pursuant to any other law.~~

**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.~~

## **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 ordinance 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. *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.~~

Nene

### **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~~youth into an area restricted to ~~eighteen~~twenty-one and older shall be subject to a fine in an amount of ~~twenty-five~~one hundred dollars (\$~~25~~100) for a first offense, ~~fifty~~two hundred dollars (\$~~50~~200) for a second offense, ~~one~~three hundred dollars (\$~~100~~300) 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 c. 40A, sect. 21D. Any fines imposed under the provisions of this chapter shall inure to the ~~e~~City of Cambridge. For the purposes of this chapter, the following shall be enforcing officers: Police Officers; and employees of the License Commission, the Public 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.

### **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 judgement of a court of competent jurisdiction, this Ordinance shall be construed as if it did not contain such phrases, sentences, clauses, or paragraphs.

### **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.

### **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.~~

~~In City Council June 9, 2003.~~

~~Passed to be ordained as amended by a yea and nay vote:~~

~~Yeas 7; Nays 2; Absent 0.~~

~~Attest: D. Margaret Drury, City Clerk.~~

~~A true copy;~~

~~ATTEST:-~~

D. Margaret Drury  
City Clerk

**Appendix A to 8.28.085-- Lists of Parks and Plazas, with Smoking Status**

| <b>Park Name</b>                                      | <b>Smoking Status</b>  |
|---|------------------------|
| 1 Ahern Field   | Not allowed at tot lot |
| 2 Alberico Park                                       | Allowed                |
| 3 Alden Park  | Allowed                |
| 4 Anderson Courts                                     | Allowed                |
| 5 Bergin Park   | Allowed                |
| 6 Cambridge Common                                    | Not allowed at tot lot |
| 7 Centanni Way  | Allowed                |
| 8 Charles Park  | Not allowed at tot lot |
| 9 Clarendon Avenue Playground                         | Not allowed at tot lot |
| 10 Clement G. Morgan Park                             | Allowed                |
| 11 Cooper Park  | Not allowed            |
| 12 Corporal Burns Park                                | Not allowed at tot lot |
| 13 Costa Lopez Taylor Park                            | Allowed                |
| 14 Dana Park  | Not allowed at tot lot |
| 15 Danehy Park  | Not allowed at tot lot |
| 16 David Nunes Park                                   | Allowed                |
| 17 Donnelly Field                                     | Not allowed at tot lot |
| 18 Elm/Hampshire Plaza                                | Not allowed            |
| 19 Father Callanan Playground                         | Allowed                |
| 20 Flagstaff Park                                     | Allowed                |
| 21 Fort Washington Park                               | Allowed                |
| 22 Franklin Street Park                               | Not allowed            |
| 23 Fresh Pond Reservation                             | Allowed                |
| 24 Front Park   | Allowed                |
| 25 Fulmore Park                                       | Allowed                |
| 26 Gannett/Warren Pals Park                           | Not allowed            |
| 27 Garden Street Glen/Roethlisberger<br>Memorial Park | Allowed                |
| 28 Gibbons Park                                       | Allowed                |
| 29 Glacken Field                                      | Not allowed at tot lot |
| 30 Gold Star Mothers Park                             | Not allowed at tot lot |
| 31 Greene • Rose Heritage Park                        | Not allowed at tot lot |
| 32 Hastings Square                                    | Allowed                |
| 33 Hoyt Field   | Not allowed at tot lot |
| 34 Hurley Park  | Not allowed            |
| 35 Joan Lorentz Park                                  | Not allowed at tot lot |
| 36 Kingsley Park                                      | Allowed                |
| 37 Larch Road Park                                    | Not allowed at tot lot |
| 38 Lechmere Canal Park                                | Not allowed at tot lot |
| 39 Lindstrom Field                                    | Not allowed at tot lot |
| 40 Linear Park  | Allowed                |
| 41 Longfellow Park                                    | Allowed                |
| 42 Lopez Street Park                                  | Not allowed            |
| 43 Lowell School Park                                 | Not allowed at tot lot |
| 44 Maple Avenue Park                                  | Not allowed            |

|    |   |                        |
|----|---|------------------------|
| 45 | Market Street Park                              | Not allowed            |
| 46 | McMath Park                                     | Allowed                |
| 47 | New Riverside Neighborhood Park                 | Allowed                |
| 48 | Pacific Street Open Space                       | Allowed                |
| 49 | Paine Park                                      | Not allowed            |
| 50 | Pine Street Park                                | Not allowed            |
| 51 | Rafferty Park                                   | Allowed                |
| 52 | Raymond Park/Corcoran Field                     | Allowed                |
| 53 | Reverend Williams Park                          | Not allowed at tot lot |
| 54 | Rindge Field                                    | Allowed                |
| 55 | Riverside Press Park                            | Not allowed at tot lot |
| 56 | Russell/Samp Field/Comeau Field                 | Not allowed at tot lot |
| 57 | Sacramento Field                                | Not allowed at tot lot |
| 58 | Sennott Park                                    | Not allowed at tot lot |
| 59 | Silva Park                                      | Not allowed            |
| 60 | Squirrel Brand Park                             | Not allowed            |
| 61 | St. Peter's Field                               | Not allowed at tot lot |
| 62 | Thomas P. O'Neill, Jr. Municipal<br>Golf Course | Allowed                |
| 63 | Tobin Field                                     | Allowed                |
| 64 | Wilder-Lee Park                                 | Not allowed            |
| 65 | William G. Maher Park                           | Allowed                |
| 66 | Winthrop Square                                 | Allowed                |

| <b>Plaza Name</b> | <b>Smoking Status</b>              |         |
|-------------------|------------------------------------|---------|
| 67                | Bishop Allen Plaza                 | Allowed |
| 68                | Brattle Square                     | Allowed |
| 69                | Carl Barron Plaza                  | Allowed |
| 70                | Dawes Park                         | Allowed |
| 71                | Dolan Square                       | Allowed |
| 72                | Eliot Street Plaza                 | Allowed |
| 73                | Harvard Square                     | Allowed |
| 74                | Lafayette Square                   | Allowed |
| 75                | Mt. Auburn Veterans Memorial Plaza | Allowed |
| 76                | Point Park                         | Allowed |
| 77                | Porter Square                      | Allowed |
| 78                | Quincy Square                      | Allowed |
| 79                | Sullivan Square                    | Allowed |
| 80                | Vellucci Plaza                     | Allowed |
| 81                | Western Ave. and River St.         | Allowed |
| 82                | Zimmerman Square                   | Allowed |