

Section 5. Clean Indoor Air

A. Definitions:

1. All Alcohol - Club: Any establishment holding a valid All Alcohol - Club License issued by the Framingham Board of Selectmen
2. All Alcohol - Innholder: Any establishment holding a valid All Alcohol - Innholder License issued by the Framingham Board of Selectmen
3. All Alcohol - Restaurant: Any establishment holding a valid All Alcohol - Restaurant License issued by the Framingham Board of Selectmen
4. All Alcohol - Veterans' Club: Any establishment holding a valid All Alcohol - Veterans' License issued by the Framingham Board of Selectmen
5. Board: The Board of Health of the Town of Framingham
6. Bar: An establishment holding a valid Liquor License, whose business is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.
7. Bar Area of a Restaurant: An area of a restaurant that is devoted to the serving of alcoholic beverages for consumption by guests or restaurant patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages.
8. Clubs: All Alcohol - Clubs and All Alcohol - Veterans' Clubs
9. Common Area: All areas of a restaurant or bar which do not constitute seating. Examples include, but are not limited to, entryways, waiting areas, hallways, restrooms and public telephone areas.
10. Liquor Licensee: Any establishment holding one of the following Licenses: All Alcohol - Innholder, All Alcohol - Restaurant, Malt Wine - General, and Malt Wine - Restaurant. For the purposes of this bylaw, establishments holding the following Licenses are not considered holders of Liquor Licenses: All Alcohol - Club, and All Alcohol - Veterans' Club.
11. Malt Wine - General: Any establishment holding a valid Malt Wine - General License issued by the Framingham Board of Selectmen
12. Malt Wine - Restaurant: Any establishment holding a valid Malt Wine - Restaurant License issued by the Framingham Board of Selectmen
13. Non-Bar Area: The area of a restaurant which is not considered a Bar Area.
14. Person: Any person, 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.
15. Restaurant: Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria and other eating establishment which gives or offers food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
16. Seating Capacity: The capacity designated on the occupancy permit of a food service establishment.
17. Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other tobacco product in any form.

18. Town: The Town of Framingham

B. Posting Notice of Prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this bylaw 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).

No person shall remove a sign posted under the authority of this bylaw.

C. Limitations on Smoking:

1. Restaurants without a Liquor License - No person shall smoke nor shall any person, employee, or other person having control of the premises upon which smoking is prohibited by this bylaw, or the agent or designee of such person, permit a person to smoke in a Restaurant without a Liquor License.
2. Restaurant with a Liquor License, but without a Bar Area - No person shall smoke nor shall any person, employee, or other person having control of the premises upon which smoking is prohibited by this regulation, or the agent or designee of such person, permit a person to smoke in a Restaurant with a Liquor License, but without a Bar Area.
3. Restaurants with a Liquor License and a Bar Area -
 - a. Non-Bar Area - No person shall smoke nor shall any person, employee, or other person having control of the premises upon which smoking is prohibited by this regulation, or the agent or designee of such person, permit a person to smoke in the Non-Bar Area of a Restaurant with a Bar Area.
 - b. Bar Area - Smoking is permitted in the Bar Area of a Restaurant, provided that the restaurant owner holds a valid liquor license and provided that:
 - i) the bar area shall not include any common area of the premises to which any patron seated in the non-smoking area may need access, including but not limited to waiting areas, restrooms, and access routes thereto;
 - ii) the perimeter of a bar area of a restaurant in which smoking is permitted shall be separated by a floor-to-ceiling physical barrier;
 - iii) the bar area of the restaurant shall be marked with signs that warn patrons of the dangers of exposure to secondhand smoke;

- iv) the bar area of the restaurant shall not exceed twenty-five percent (25%) of the total combined seating capacity of the restaurant and bar area of the restaurant;
- v) no person under the age of eighteen (18) years old is permitted to enter the bar area of the restaurant.

4. Bars - Smoking is permitted in Bars, provided that:

- a. No person under the age of eighteen (18) years old is permitted to enter the bar.
- b. Smoking is prohibited in all common areas.
- c. Smoking sections do not exceed 50% of the total seating.

5. Clubs - Smoking is permitted in these establishments except when the establishment is open to the public. When the public is invited into these establishments, these establishments must abide by this bylaw to the same degree that they would have it if held any of the following licenses: All Alcohol - Innholder, All Alcohol - Restaurant, rather than an All Alcohol - Club or All Alcohol - Veterans' Club License.

D. Exception:

Private and public assembly rooms while these places are being used for private functions.

E. Violations:

1. Violations of Section B

Any person who violates Section B of this bylaw shall be subject to a fine of fifty dollars (\$50) per offense.

2. Violations of Section C

- a. As long as the requirements of Section B are met, any patron, guest, or visitor who violates Section C of this bylaw shall be subject to a fine of fifty dollars (\$50.00) per offense.
- b. Any person, employee, or other person having control of the premises upon which smoking is prohibited, who allows smoking to occur shall be subject to a fine in an amount of one hundred dollars (\$100) for the first offense, two hundred dollars (\$200) for a second offense and three hundred dollars (\$300) for a third or subsequent offense. All violations will be written against the establishment.

F. Enforcement:

As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in a manner provided in M.G.L. c. 40, Sect. 21D, by the Framingham Board of Health, its agents and the Framingham Police Department. Any fines imposed under the provisions of this regulation shall ensure to the Town of Framingham for such uses as the Town may direct.

Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate enforcement.

G. Conflict with Other Laws or Regulations:

Notwithstanding the provisions of the foregoing Paragraph C of this bylaw, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other laws so as to permit smoking in areas here it is prohibited by such fire, health or other laws.

H. Severability:

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions being in force.

I. Effective Date:

This bylaw become effective as of January 2, 2000.