

Town of Tewksbury
Board of Health
Regulations Affecting Smoking in Certain Places and Youth Access to Tobacco
Adopted February 1, 1995
Revised February 20, 1997
Revised April 19, 2001

1.0 PURPOSE

The Board of Health does hereby find that:

Many studies have found that tobacco smoke is a major contributor to indoor air pollution. The Environmental Protection Agency has classified secondhand smoke as a Class A Carcinogen and has been determined to cause lung cancer in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease, individuals with impaired respiratory function including asthmatics and those with obstructive airway disease. Other health hazards induced by breathing secondhand smoke include heart disease, negative birth outcomes, a wide range of respiratory problems, allergies and irritations to the eyes, nose, and throat.

Accordingly, the Board of Health finds and declares that the purpose of this regulation is to protect the public health and provide a smoke free environment for nonsmokers in public places. Further, the Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. The Surgeon General concluded that nicotine is generally the first drug used by young people who use alcohol, marijuana and harder drugs. In addition, 90% of adult smokers began before their nineteenth birthday. In recognition of these findings, a strict and enforceable regulation shall be implemented to prevent the illegal sale and easy access of cigarettes and other tobacco products to minors. If access is restricted to minors and they do not experiment before they turn nineteen (19) years old, statistics indicate they will not start smoking.

2.0 AUTHORITY

- 2.1 These Regulations are adopted under the authority of M.G.L. c.111, § 31, which authorizes the Boards of Health to make and adopt reasonable health regulations.
- 2.2 Cite these regulations as "Tobacco Control Regulations"²

3.0 APPLICABILITY

- 3.1 These regulations shall apply to all public places, town owned buildings, restaurants and retail stores within the Town of Tewksbury ("The Town").
- 3.2 These regulations shall supersede all previous regulations pertaining to smoking and tobacco use or sales.
- 3.3 Revisions shall be effective upon publication of a legal notice in a newspaper of general circulation in the Town.³

4.0 DEFINITIONS

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

Bar: Means an area which 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. Although a restaurant may contain a bar, the term "bar" shall not include any section of the restaurant dining area.

¹ Revised March 16, 1995

² Revised February 20, 1997

³ Revised April 19, 2001

Business: Means any sole proprietorship, partnership, joint venture, corporations or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

CFM's: Means cubic feet per minute. ³

Designated Smoking Area: Means the area designated by the owner, operator, manager or other person(s) of authority, in which smoking is permitted. Such areas must be totally enclosed with proper ventilation. Said area shall not be an area where nonsmokers must have access.

Employee: Means any person who performs a service for direct compensation or any person who volunteers their services for a non-profit entity.

Enclosed Area: Means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling.

Free Standing Display: Means any display of cigarettes or tobacco products which is not attached to or on top of a check-out counter and where distribution of the tobacco products is not directly controlled by an owner, operator, manger, or employee.

Merchant Education Training: A program explaining ways to properly check identification cards for proper age requirements, and also to provide training on spotting false identification, how to deal with unruly customers, and the penalties of not complying with the regulation. It can be provided on site or at a town wide location.^{2, 3}

Proper Ventilation: An area enclosed by walls and doors, which is separately ventilated directly to the outside and shall not allow any air to re-circulate through the building ventilation system. The area shall be under negative pressure and achieve 60 cfms per person as to reduce air from escaping into other areas which may be accessed by nonsmokers. ³

Public Place: Means any enclosed area to which the public is invited or in which the general public is permitted, including but not limited to banks, licensed day care facilities, elevators accessible to the general public, stairwells and lobbies of hotels/motels and other public buildings, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, museums, waiting rooms and public access areas of private facilities or worksites. A private residence is not a public place. ³

Restaurant: Means any coffee shop, cafeteria, sandwich stand, pizza shop, private and public school cafeteria, and any other eating establishment which gives or sells food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in this section.

Retail Store: Means any establishment selling goods or articles or personal services to the general public. ³

Service Line: Means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

¹ Revised March 16, 1995

² Revised February 20, 1997

³ Revised April 19, 2001

Smoking: Means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

Sports Arena: Means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble to engage in exercise, participate in athletic competition, or witness sporting events.

Tobacco Vending Machine: Means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, or slugs.

Tobacco Products: Any product containing tobacco which can be smoked, chewed, or dipped including but not limited to cigars, cigarettes, pipe tobacco, chew, dip, and/or snuff. For the intent of this regulation it shall also mean any product associated with tobacco use including matches, lighters, rolling papers, etc.²

5.0 PROHIBITION OF SMOKING IN PUBLIC PLACES

5.1 Smoking shall be prohibited in all enclosed public places within the Town of Tewksbury ("The Town") including, but not limited to, the following places:

- A. Municipal Buildings.
- B. Restaurants.
- C. Retail Stores and Malls.
- D. Waiting rooms, hallways, wards and semi-private rooms of health care facilities, including but not limited to, hospitals, nursing homes, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- E. Child Care Facilities.
- F. Schools. (M.G.L. c.71§2A).
- G. Elevators.
- H. Buses, including both school buses and public buses, taxicabs, and other means of public transit under the authority of the Town, and ticket, boarding, and waiting areas of public transit depots.
- I. Restrooms.
- J. * All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, and haircutting establishments.
- K. Hotels and motels must make available 75% of sleeping rooms as non-smoking.
- L. Public areas of aquariums, galleries, libraries, and museums when open to the general public.
- M. Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except where smoking is part of the stage production.
- N. Sports arenas, auditoriums, convention halls and physical fitness facilities.

¹ Revised March 16, 1995

² Revised February 20, 1997

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- O. Every room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees, or agencies of the Town or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the Town.
- P. Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- Q. Lobbies, hallways, and other common areas open to the public in commercial facilities.
- R. Polling places.
- S. Workplaces. Smoking shall be prohibited in all enclosed facilities within a place of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. This shall not apply to exempt places as provided for in Section 10.00 of this regulation. ³

Sections 6.0-6.9 Reserved

10.00 WHERE SMOKING IS NOT REGULATED

10.01 Notwithstanding any other provision of this section to the contrary, the following areas shall not be subject to smoking restrictions:

- A. Private residences, except when used as a child care or health care facility.
- B. Restaurants, hotel and motel conference or meeting rooms, private and public assembly rooms while these places are being used for private functions.
- C. Bars: Seating in bars, where smoking is permitted, shall not exceed twenty-five (25) percent of the total number of allowable seats in the establishment. ³
- D. 25% of hotel and motel sleeping rooms.
- E. Private or semiprivate rooms of nursing homes and long-term facilities, occupied by one (1) or more patients, all of whom are smokers and have requested in writing on the facility admission form to be placed in rooms where smoking is permitted.
- F. Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle.
- G. Performers upon the stage, provided that the smoking is part of a theatrical production.
- H. Designated areas which are totally enclosed with proper ventilation and located where non-smokers do not have to enter the area or be exposed to any secondhand smoke.
- I. Outdoor seating areas; the Board of Health strongly encourages designated smoking and non-smoking sections in this area that are separated as much as possible. ¹
- J. Private Clubs, except when a private club is open to the general public. ³

10.02 Notwithstanding any other provision of this section, any owner, operator, manager, or other person who

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controls any establishment as described in this section may declare that entire establishment as a non-smoking establishment.

11.00 POSTING OF SIGNS

11.01 "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) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.

11.02 Every establishment regulated here shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

11.03 Every establishment that has a lounge or bar area designated as a smoking area and meets all criteria for said designated area shall post at every entrance a conspicuous sign clearly stating that smoking is allowed in designated smoking areas only.²

12.00 RETAIL SALE OF TOBACCO PRODUCTS

12.01 Sales to Minors

In conformance with M.G.L. c.270, §6, no person shall deliver, give, or sell cigarettes, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen (18) years.

12.02 Posting of State Law

A. In conformance with M.G.L., c.270, §7, a copy of M.G.L., c.270, §6, shall be posted conspicuously by the owner, operator, manager, or other person in charge thereof in the shop or other place used to sell cigarettes at retail. The notice to be posted shall be the notice provided by the Massachusetts Department of Public Health. Such notice shall be at least forty-eight (48) square inches and shall be posted at all cash registers where tobacco products are sold. It shall be posted in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

B. Store owners, operators, managers, or other person(s) in charge where cigarettes, chewing tobacco or other tobacco products are sold shall conspicuously post and maintain signs that proof of age is required to purchase tobacco products. At a minimum, signs shall be posted at every cash register.

12.03 Identification Required

A. No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual who appears to be age twenty-seven (27) or younger, without requesting and examining photographic identification establishing the purchaser's age as eighteen (18) years or greater. No employee shall sell cigarettes or other tobacco products to a person under eighteen (18) years of age who has a note or verbal approval or request for sale from a person older than eighteen (18) years of age even if said person is a parent or legal guardian.^{2, 3}

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12.04 Sales by Persons Under Age 18

No person or entity selling tobacco products shall allow anyone under eighteen (18) years of age to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and state laws regarding sale of tobacco and signs a sworn statement, a copy of which will be placed on file in the office of the employer that they understand and will uphold the regulations. ³

12.05 Free Standing Displays

Freestanding displays of tobacco products, from which individual packages, containers or cartons may be selected by the customer are prohibited. All displays of tobacco products shall be located upon or behind the sales counter and the purchase of cigarettes or tobacco products must be controlled by the owner, operator, manager or employee. Self-service of cigarettes or tobacco products is prohibited.

12.06 Out-of-Package Sales

It is unlawful to sell cigarettes out of the manufacturer's package or without required health warnings. Sale or distribution of tobacco products in any form other than an original factory wrapped package is prohibited. The sale of single cigarettes is prohibited.

12.07 Free Distribution/Free Samples

- A. There shall be no free distribution within the Town of any cigarette or tobacco product unless such product is part of a promotional campaign that rewards a legal purchase with a free sample. Redemption of coupons distributed in newspapers or other periodicals or affixed to packaging for products shall be allowed, provided purchase is made by those at least eighteen (18) years of age. ³
- B. It shall be illegal to distribute free cigarettes or tobacco products to persons under the age of eighteen (18) years.
- C. All free cigarettes and tobacco products shall comply with the packaging requirements of Regulation 12.06 cited above.

12.08 Permit Required

After February 1, 1995, it shall be unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid permit from the Town for each location in which tobacco products are sold. Each permit shall expire annually on January 31st.

12.09 Fee for Permit

The fee for a one-year tobacco retailer's permit shall be set annually by the Board of Health.

12.10 Non-Transferability

A tobacco retail permit is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.

13.00 VENDING MACHINES

13.01 After February 1, 1995, no person, business, firm, corporation, establishment or agency shall install or maintain a cigarette vending machine or any other device for the sale or distribution of cigarettes or tobacco products.

13.02 Deleted_{2, 3}

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14.00 RESTRICTIONS ON ADVERTISING AND PROMOTION OF TOBACCO

14.01 No person shall display on or in any bus, taxicab licensed or garaged within the Town, or any other vehicle used for public transportation within the Town, an advertisement for cigarettes, cigars, pipe tobacco, chewing tobacco or other tobacco products.

15.00 VARIANCE

- 15.01** A. The Board of Health may vary the application of any provision of these regulations with respect to any particular case when the Board of Health finds the enforcement thereof would do manifest injustice; provided, that the decision of the Board of Health is not in conflict with the spirit of these regulations.
- B. Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons thereof. Notice of a variance request must be published in a local newspaper at least ten days before the scheduled date of the public hearing, at the cost of the applicant. ³
- C. Any variance granted must be in writing with a copy available to the public at all reasonable business hours in the Board of Health. Any variance granted must be posted on the premise in a prominent location for the duration that the variance is in effect. Any and all variances of this regulation granted are non-transferable.
- D. The Board of Health may charge a hearing fee to hear any and all variance requests.

16.00 ENFORCEMENT

- 16.01** Any person who desires to register a complaint under this regulation may do so with the Board of Health.
- 16.02** The Board of Health may require, while an establishment is renewing any permit, a certification from the owner, manager, operator or other person(s) having control of such establishment that all requirements of these regulations have been complied with.
- 16.03** Any owner, manager, operator or other person(s) having control of any establishment regulated by these regulations may inform persons violating this article of the appropriate provisions thereof.
- 16.04** Notwithstanding any other provision of these regulations, the Board of Health or any person aggrieved by the failure of the owner, operator, manager or other person(s) in charge of a place covered by this regulation to comply with any provision, may apply for injunctive relief to enforce the provisions of this regulation in any court of competent jurisdiction.
- 16.05** The Board of Health may also enforce compliance through non-criminal disposition if and when the Town has adopted M.G.L. c.21D. ³
- 16.06** Compliance monitoring of this regulation maybe enforced through periodic inspections. Inspections may include the attempted purchase of tobacco products by minors under the supervision of an agent of the Board of Health. Such an inspection shall not be construed as entrapment.

17.00 VIOLATIONS AND PENALTIES

17.01 It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to these regulations to fail to comply with any of its provisions.

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- 17.02 It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of these regulations.
- 17.03 Any person failing to comply with any provision of said Tobacco Control Regulation may be subject to a fine.²
- 17.04 Any owner, operator, manager or other employee having control of an establishment which holds a tobacco sales permit and fails to comply with any provision of said Tobacco Control Regulations may be subject to suspension or revocation of said permit in addition to a fine.²
- 17.05 Violations of any provision of these regulations may be punishable by:^{2, 3}
- A. In the case of a first violation, a written warning with an explanation of all violations shall be issued to one or more of the following: the owner, operator, manager or other person(s) having control of an establishment, or to the person in violation of these regulations.
 - B. In the case of a second violation, a fine of fifty dollars (\$50) shall be issued to one or more of the following: any person in violation of said regulation, or the owner, operator, or manager of an establishment in which a violation occurs. The Tobacco Sales Permit shall be suspended for a period of three (3) consecutive days.
 - C. In the case of a third violation, a fine of one hundred dollars (\$100) shall be issued to one or more of the following: any person in violation of said regulation, or the owner, operator, or manager of an establishment in which a violation occurs. The Tobacco Sales Permit will be suspended for fourteen (14) consecutive days.
 - D. In the case of a fourth violation, a fine of two hundred and fifty dollars (\$250) shall be issued one or more of the following: any person in violation of said regulation, or the owner, operator, or manager of an establishment in which a violation occurs. The Tobacco Sales Permit shall be suspended for thirty (30) consecutive days and may result in permanent revocation.
 - E. In the case of a fifth and all subsequent violations, a fine of five hundred dollars (\$500) shall be issued to one or more of the following: any person in violation of said regulation, the owner, operator, manager of an establishment in which a violation occurs. The Tobacco Sales Permit shall be suspended for sixty (60) consecutive days and may result in permanent revocation.
 - F. Any owner, operator, manager or other employee having control of an establishment regulated under these regulations may refuse service to any person who fails to comply with these regulations and may have such person(s) removed from the establishment.
 - G. * As condition of license renewal, the Board of Health may require a merchant training for all employees.
 - H. The Board of Health may suspend or revoke a permit to sell tobacco at anytime it deems appropriate, not withstanding the above requirements.

18.00 RESERVED

19.00 NONRETALIATION

- 19.01 No person(s) or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smoke-free environment afforded by this article.

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² Revised February 20, 1997

³ Revised April 19, 2001

20.00 OTHER APPLICABLE LAWS

20.01 This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

21.00 SEVERABILITY

21.01 Each provision of this regulation is construed as separate to the extent that if any section, item, sentence, clause, or phrase, is determined to be invalid for any reason, the remainder of this regulation shall continue in full force and effect.

22.00 HEARINGS

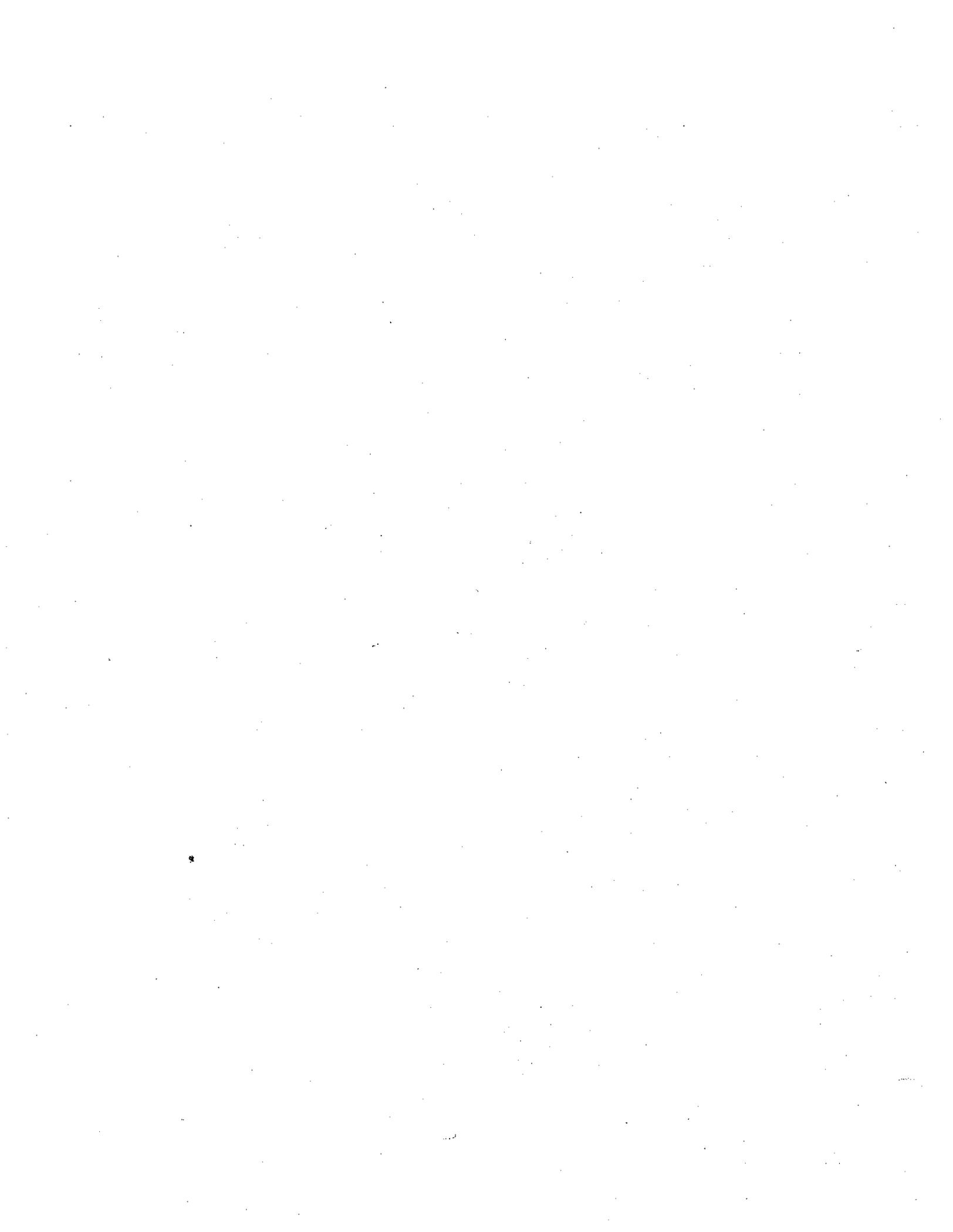
22.01 Any person aggrieved by any enforcement decisions has the right to appeal the decision to the Board of Health and no hearing fee will be levied.

Revised April 19, 2001

Stephanie Wilkie, Chairman

Edward Sheehan, Vice Chairman

Susan Sullivan, Clerk



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