

Lower Merion Township Tobacco Ordinance

ARTICLE IVA, Cigarette Vending Machines [Added 3-20-1991 by Ord. No. 3232]

§ 90-11.1. Findings.

The Board of Commissioners of the Township of Lower Merion hereby finds that:

A. The Surgeon General of the United States has called for a ban on the sale of cigarettes by vending machines.

B. The Commonwealth of Pennsylvania has banned the sale or furnishing of cigarettes or tobacco in any form to minors under the age of 18.

C. The presence of cigarette vending machines permits indiscriminate sales of cigarettes to minors, not preventable by any assured means of enforcement.

D. No penalty has been imposed by commonwealth statute upon minors for the purchase of cigarettes; rather, penalties are imposed only on the seller.

§ 90-11.2. Prohibited acts; violations and penalties. [Amended 1-19-1994 by Ord. No. 3345]

A. No person, firm, corporation or association shall own, operate, rent or permit the use of a cigarette vending machine on premises under such entity's control in the Township of Lower Merion except as provided herein.

B. Any person violating the provision of § 90-11.2A shall be subject to a fine of \$500 for each such violation. No person, firm, corporation or association which owns a cigarette vending machine or which owns a place of business within which a cigarette vending machine is placed for use by the public or which has control over a cigarette vending machine placed for use by the public shall permit, authorize or otherwise allow such machine:

(1) To be operated by a minor;

(2) To be placed at a location except as permitted by this article;

(3) To remain unmonitored in violation hereof; or

(4) To be operated unless a sign is conspicuously posted thereon declaring that tobacco products may not be sold to persons under 18 years of age.

C. Cigarette vending machines may be located in establishments which exclude minors as expected personnel or customers, including but not limited to bars, beer distributors and work areas not generally open to the public. In these establishments, cigarette vending machines shall not be located within entranceways.

D. Cigarette vending machines may be located in an eating and drinking place, as defined in this chapter, and in gasoline service stations if they are located where there is an unobstructed and uninterrupted view of the machine by the facility owner, operator or their designee, who shall monitor the machine at all times. In such establishments cigarette vending machines shall not be located in public rest rooms or entranceways.

E. Any person, firm, corporation, association, facility owner or operator or the designee thereof violating the provisions of this section shall be subject to a fine for each such violation occurring on a premises under such entity's control of \$100 for the first violation, \$250 for the second violation, \$500 for the third violation and \$1,000 for each subsequent violation. Each day a cigarette vending machine is located in violation of this section shall be considered a separate offense.

§ 90-11.3. Permits. [Added 1-19-1994 by Ord. No. 3345]

The permit requirements and provisions provided in Article V hereof for food and beverage vending machines shall apply as well to cigarette vending machines.

ARTICLE IVB, Sale of Tobacco Products [Added 7-20-1994 by Ord. No. 3366]

§ 90-11.4. Purpose.

Reliable studies have shown that the use of cigarettes by minors is a significant health hazard to them both as minors and continuing into their adulthood. State law forbids the sale of cigarettes to minors, but there is substantial evidence that this law is frequently violated. It is the intent of the Board of Commissioners to decrease sales of tobacco products to minors by notifying sellers and purchasers at the point of retail distribution that the **sale of tobacco** products to a person under the age of 18 years is unlawful.

§ 90-11.5. Posting of signs.

A. At every point in the township where tobacco products are sold at retail, a sign must be conspicuously posted declaring that tobacco products may not be sold to persons under 18 years of age.

B. Wording on signs required by this section shall be at least two inches high unless otherwise approved by the Director. Such signs shall be protected from tampering, damage, removal or concealment.

ARTICLE V, EN Food and Beverage Vending Machines

§ 90-12. Definitions.

As used in this article, the following terms shall have the meanings indicated:

MACHINE LOCATION -- The room, enclosure, space or area where one or more vending machines are installed and operated.

MISBRANDING -- The use of any written, printed or graphic matter upon or accompanying products or containers dispensed from vending machines, including signs or placards displayed in relation to such products so dispensed, which is false or misleading or which violates any applicable local, state or federal labeling requirements.

VENDING MACHINE -- Any self-service device which, upon insertion of a coin, coins, token or tokens or by other similar means, dispenses food, beverage or ice, either in bulk or package, without the necessity of replenishing the device between each vending operation. [Added 11-18-1987 by Ord. No. 3069]

§ 90-13. Permit application.

A. Application for a permit shall be on forms provided by the Board, which shall set forth the name, residence and business address of the applicant, the names of the persons operating the establishment or establishments from which the prepared or perishable food will be obtained and the manufacturer and model number of each vending machine.

B. Every food vendor shall, upon demand, furnish to the Board such additional information as it may require to enable it to determine whether the provisions of this Health Code are being complied with. Failure to furnish this information promptly shall result in the refusal to issue or the revocation of the food vendor's permit.

§ 90-14. Permit required; display; term; inspections.

A. It shall be unlawful for any person to sell or distribute to the public any food or beverage, including ice, from any type of vending machine without obtaining a permit from the Board. [Amended 11-18-1987 by Ord. No. 3069]

B. The name, address and number of the operator's permit shall at all times be kept posted prominently in or at each machine location. Unless previously revoked or suspended, all permits shall remain in effect for one year following the date of issuance.

C. Where food is processed outside the township and sold by means of a vending machine in the township, written permission for the Director of Health to inspect such processing establishment shall be secured by the applicant. In lieu of such inspection, the Director of Health may accept reports from a responsible health officer of the processor's municipality.

§ 90-15. Inspection fee. [Amended 9-21-1977 by Ord. No. 1802]

Each applicant, at the time of applying for a permit to operate vending machines in the township, shall pay an annual inspection fee as set forth in the Township Schedule of Fees, as adopted and amended from time to time by the Board of Commissioners. EN

§ 90-16. Single-service containers.

All single-service containers which receive food or beverage from machines dispensing such products in bulk shall be purchased in sanitary cartons or packages which protect the containers from contamination, shall be stored in a clean dry place until used and shall be handled in a sanitary manner. Such containers shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the container magazine or dispenser of the vending machines. The vending machine magazine or dispenser shall protect the food contact surface of single-service articles from manual contact, dust, insects, rodents and other contamination.

§ 90-17. Construction of machines.

A. All vending machines used for the dispensing of food and beverages shall be of a design and construction equivalent to or in excess of the standards approved by the National Automatic Merchandising Association or the National Sanitation Foundation.

B.All vending machines shall be mounted on legs six inches or more in height or mounted on casters or rollers or mounted on gliders to permit them to be easily moved unless the machine is effectively sealed to the floor. [Amended 11-18-1987 by Ord. No. 3069]

C.All service connections through an exterior wall of the machine, including water, gas, electrical and refrigeration connections, shall be grommeted or sealed to prevent the entrance of insects and rodents.

D.The non-product-contact surfaces of the interior of vending machines shall be so designed and constructed as to permit easy cleaning and to facilitate maintenance operations.

E.All product-contact surfaces of vending machines shall be smooth, in good repair and free of breaks, corrosion, open seams, cracks and chipped places. The design of such surfaces shall be such as to preclude routine contact between food and V-type threaded surfaces. All joints and welds in product-contact surfaces shall be smooth, and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.

F.All product- or ingredient-contact surfaces of vending machines, including containers, pipes, valves and fittings, shall be constructed of nontoxic, corrosion resistant and relatively nonabsorbent materials and shall be kept clean. All containers, valves, fittings, chutes and faucets which are in contact with food shall be easily and readily removable and so fabricated as to be easily disassembled; and when disassembled, all surfaces shall be visible for inspection and cleaning. In machines of such design that food-contact surfaces are not readily removable because of their function, in-place cleaning of such surfaces may be permitted, provided that:

(1)They are so arranged that cleaning and bactericidal solutions can be circulated throughout the fixed system.

(2)Such solutions will contact all interior surfaces.

(3)The system is self-draining or otherwise completely evacuated.

(4)The cleaning procedures result in thorough cleaning of the equipment.

G.The openings into all nonpressurized containers used for the storage of vendable foods and ingredients, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening and shall be sloped to provide drainage from the cover where the collection of condensation, moisture or splash is possible. Concave covers or cover areas are prohibited. Any port opening through the cover shall be flanged upward at least 3/16 inch and shall be provided with a cover which overlaps the flange. Condensation or drip deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts and other functional parts extending into the container unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of a material which is nontoxic, relatively stable and relatively nonabsorbent and shall have a smooth surface. All gasket retaining grooves shall be readily cleanable.

H.The delivery tube or chute and orifice of all bulk food and bulk beverage vending machines shall be protected from normal manual contact, dust, insects, rodents and other contamination. The design shall be such as to divert condensation or other moisture from the normal filling position of the container receiving the food or beverage. The vending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept closed except when

the machine is in the process of delivering food or beverage, provided that the delivery tube, chute or orifice of machines vending only dry, nonreadily perishable bulk foods may be designed to permit the degree of customer access to food contact surfaces which is necessary for self-service.

I. The product storage compartment within vending machines dispensing packaged liquid products shall be so constructed as to be self-draining, or shall be provided with a drain outlet which permits complete draining of the compartment. All such drains shall be easily cleanable.

§ 90-18. Water supply. [Amended 11-18-1987 by Ord. No. 3069]

All water used in vending machines shall be of a safe and sanitary quality and shall be provided from a source constructed and operated in accordance with applicable law.

§ 90-19. Plumbing.

A. All plumbing connections and fittings shall be installed in accordance with the provisions of Chapter 115, Plumbing.

B. Where check valves are used for the protection of the water supply system, a screen of not less than 100 mesh to the inch shall be installed in the water supply line immediately upstream from the check valves.

C. In any vending machine in which product ingredient water is pushed by carbon dioxide from pressurized portable containers into icemakers or other components, copper or other potentially toxic material shall not be used to store or pipe such water.

§ 90-20. Waste disposal.

A. Self-closing, leakproof, readily cleanable, plainly labeled and designated waste container or containers shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures and other single-service items. Such waste containers shall not be located within the vending machine, provided that an exception may be made for those machines dispensing only packaged products with crown closures, in which case the closure receptacle may be located within the machine. Suitable racks or cases shall be provided for multiuse containers or bottles.

B. Containers shall be provided within all machines dispensing liquid products in bulk for the collection of drip, spillage, overflow or other internal wastes.

C. An automatic shutoff device shall be provided which will place the vending machine out of operation before such container overflows, provided that vending machines which are not connected to a water supply line and whose icemaker condensate or melt water does not discharge into a waste container and which are equipped with two or double product valves per circuit shall not be required to have such an automatic shutoff device. Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable and shall be corrosion resistant. If liquid wastes from drip, spillage or overflow which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an air gap.

§ 90-21. Employee regulations.

A. Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, beverages, ingredients or with product-contact surfaces of utensils, containers or equipment.

B. No person while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound or an acute respiratory infection shall work in food service in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons. [Amended 11-18-1987 by Ord. No. 3069]

§ 90-22. Condemnation and embargo; appeal.

A. Samples of food, drink, ingredients, containers or any substance used in connection with food vending machines may be taken by a duly authorized representative of this Board for examination as often as may be deemed necessary for the detection of an impure or insanitary condition. Any food, drink or any substance used in connection with the food vending machine may be condemned, removed or destroyed by or under the direction of a duly authorized representative of the Board if, in the judgment of the representative, such food, drink or substance is adulterated, decomposed, impure, unfit for human consumption or dangerous to the public health. Any food, drink or other substance may be stopped from sale or use and placed under an embargo by any representative of the Board for as reasonable a period of time as may be required to make investigations or examination, if such may be necessary to determine that the food, drink or other substance is adulterated, decomposed, impure, unfit for human consumption or dangerous to the public health. No food, drink or other substance shall be used, removed, destroyed or otherwise disposed of while under such embargo except by or under the direction of a representative of the Board.

B. The owner of products placed under embargo by virtue of any power granted under this Health Code shall have the right to appeal to the Board. The Board shall afford a hearing and shall give due notice of the time and place of the hearing to the owner of such goods. As a result of the hearing, the Board shall have the right to stay or set aside the order.

ARTICLE X, EN Smoking [Added 1-16-1980 by Ord. No. 1891; amended 12-16-1987 by Ord. No. 3074]

§ 90-44. Declaration of legislative intent.

A. Reliable studies have shown that breathing secondhand smoke is a significant health hazard for several population groups, including children, fetuses, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

B. These health hazards include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction and bronchospasm.

C. Exposure to tobacco smoke precipitates and/or aggravates allergic attacks in persons with respiratory allergies and accelerates such allergic symptoms as eye irritation, nasal symptoms, headaches, coughing, wheezing, sore throat and hoarseness.

D. Based upon these health hazards, the intent and purpose of the Board of Commissioners is to preserve and improve the public health by limiting the exposure of the public to tobacco smoke.

§ 90-45. Smoking restrictions.

A. Indoor areas open to the public. Except as otherwise permitted by this article, no person shall smoke or carry a lighted cigar, cigarette, pipe or any other form of smoking object or device in any indoor area open to the public, including but not limited to:

(1) Public conveyances.

(2) All schools, including elementary and secondary schools, colleges and other educational and vocational institutions.

(3) Hospitals and other facilities licensed by governmental bodies in which persons reside, provided that residential health care facilities shall permit smoking by residents in at least one area not used by any nonsmoker or in a separate enclosed room set aside for use as a smoking area.

(4) Arenas, auditoriums, clubhouses, courthouses, stadiums, elevators, gymnasiums, rest rooms, lobbies, waiting rooms and waiting areas, spas and health clubs, enclosed areas containing a swimming pool, food markets, stores, banks, other commercial or professional service establishments and indoor areas of public assemblage.

(a) These restrictions shall not apply to conventions of private groups where the persons participating in the convention are individually identified by the sponsor or organizer of the convention or are determined by law.

(b) These restrictions shall not apply to all other conventions and to trade shows open to the public if the sponsor or organizer gives notice in its promotional material and advertisements that smoking will not be restricted and prominently posts notices at all entrances to the convention or trade show advising the public that smoking will not be restricted.

(c) Smoking is prohibited in bowling establishments in the bowler settee area, i.e., the area occupied by bowlers while keeping score and actually bowling. In the concourse area, i.e., the area directly behind and immediately contiguous to the bowler settee area, bowling establishments shall provide a nonsmoking area constituting at least 25% of the square footage of the area.

(5) Eating and drinking places. The provisions of this subsection shall not be applicable to eating and drinking places with a seating capacity of 25 or fewer patrons. Establishments with a seating capacity of greater than 25 shall designate a nonsmoking area sufficient to meet customer demand. Establishments shall not determine that no such demand exists. If an establishment designates at least 70% of its seating capacity as nonsmoking area, customer demand shall be deemed to have been met in all cases. Notice shall be prominently posted at each entrance advising that a nonsmoking section is available, and each patron shall be given the opportunity to state his preference. The owner, operator or person in charge of a place covered by this subsection may designate a separate room or enclosed area in such establishment solely for use by smokers.

B.Restriction of smoking in the workplace. All employers shall provide smoke-free work areas for employees who desire a smoke-free work area. A smoke-free work area shall be considered an enclosed area under the control of the employer where no smoking takes place.

(1)Each employer shall adopt, implement, make known and maintain a written policy regarding smoking in the workplace which may totally prohibit smoking in the workplace but which shall require at least the following:

(a)Smoking shall be prohibited in any enclosed work area occupied by more than one person unless such area is occupied exclusively by smokers.

(b)Smoking shall be prohibited in auditoriums, classrooms, conference rooms, meeting rooms, elevators, hallways, rest rooms, employee medical facilities and rooms or areas containing photocopying or other equipment used by employees in common unless all employees are smokers.

(c)Nonsmoking areas shall be designated in cafeterias, lunchrooms and employee lounges sufficient to meet employee demand. An employer may not determine that there is no such demand unless the employer shall document that all employees are smokers. If at least 70% of the seating capacity is designated as nonsmoking area, employee demand will be deemed to have been met in all cases.

(2)Employers shall prominently post the policy in the workplace and supply a written copy upon request to any existing or prospective employee.

(3)An employer shall use his best efforts to comply with requests from employees who desire a smoke-free work area to be assigned to areas where smoking is totally prohibited when the workplace contains areas open to the public and smoking by such persons is permitted. The employer shall maintain written documentation concerning such efforts and shall make such documentation available to the Director of Health upon request:

(4)An employer may designate a separate enclosed room as a smoking area if such room is not open to the public and is not required to be used for any purpose by employees who desire a smoke-free work area.

(5)No employer, labor organization or any person shall discharge, discriminate against or take any adverse employment action against any employee because such employee has requested a smoke-free work area, has filled out a complaint, instituted or caused to be instituted any proceeding to enforce the provisions of this chapter or has testified or is about to testify in any proceeding to enforce the provisions of this chapter.

§ 90-46. Posting of signs.

"Smoking" and "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 prominently and conspicuously posted in every place where smoking is regulated by the owner, operator, manager or other person having control of such place. Wording on such signs shall be at least two inches high unless otherwise approved by the Director. Such signs shall be protected from tampering, damage, removal or concealment.

§ 90-47. Exceptions to smoking restrictions.

The smoking restrictions in this article shall not apply to:

A. Private residences and private motor vehicles.

B. Any place where a private social function is being held when the seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such place and when such private social function occupies the entire establishment or is being held in a separate room from any other patrons of the establishment.

C. Hotel and motel rooms rented to guests.

D. Retail tobacco stores where the sale of items other than tobacco products and products used in the consumption of such tobacco products is only incidental.

E. Bars. For the purposes of this article, a "bar" shall be defined as an establishment devoted to the serving of alcoholic beverages for on-site consumption by patrons and where the service of food or nonalcoholic beverages is only incidental to the consumption of such beverages. A food service establishment may contain a bar, but the term "bar" shall not include the dining area of a food service establishment. Notice shall be prominently posted at the entrance to each bar stating that smoking is not restricted.

§ 90-48. General provisions.

A. Nothing in this article shall be construed to deny the owner, operator, manager or person in charge of any place or establishment within the township the right to designate the entire place or establishment, or any part thereof, as a nonsmoking area.

B. Any question concerning the construction of this article shall be resolved in the manner which will provide the greatest protection to persons who desire a smoke-free environment.

C. Smoking shall not be permitted where prohibited by any law, rule or regulation of any federal or state agency or any political subdivision of the state even if smoking would be allowed under the terms of this article.

D. The owner, operator, manager or person in charge of a place or establishment covered by this article shall request compliance with this article by all persons in such place.

§ 90-49. Violations and penalties.

A. The provisions of this article shall be enforced by the Director of Health, his duly authorized representatives, any police officer of the township or any affected party. A driver of any public conveyance may eject or detain for proper authorities any passenger violating any provision of this article.

B. Any person, including any employer, who shall violate any of the provisions of this article shall be liable, on conviction thereof in a summary proceeding, to pay a fine in accordance with the provisions of Article XII, Penalties, of this chapter.

C. The township may maintain an equitable action to enforce the provisions of this article, to cause correction of any violations and to recover civil penalties for such violations.

D. In undertaking the enforcement of this article, the township is assuming only to promote the general welfare. The township is not assuming, nor is it imposing on any of its officers or employees, an obligation for breach of which it is liable in money damages to any person who may claim that any breach proximately caused injury.

E. A violation of this article shall not be considered negligence per se.

§ 90-49.1. Civil actions.

A. Except as provided in Subsection B below, any citizen may commence a civil action on his own behalf against any person except the township, commonwealth or United States or any department or agency thereof to enforce the provisions of this chapter, including those provisions of this chapter which prohibit discrimination or adverse employment actions against employees.

B. No action may be commenced under this section:

(1) Prior to 30 days after the plaintiff has given written notice of the alleged violation to the Director of Health and to the alleged violator; or

(2) If the township has commenced and is diligently prosecuting a civil or criminal proceeding against the alleged violator that incorporates the citizen's cause of action.

C. Nothing in this section shall restrict any rights which any persons may have under any other township ordinance or under state or federal statutory or common law.

D. For the purposes of this section, the term "citizen" means any person or persons having an interest which is or may be adversely affected.

§ 90-49.2. Waiver.

The Director of Health may grant a waiver from the application of a specific provision of this article, provided that prior to the granting of any waiver the applicant for such waiver shall establish that compliance with the specific provision of this article would cause the applicant undue financial hardship or that other factors exist which would render strict compliance unreasonable. The Director of Health shall subject every waiver granted to such conditions or restrictions as may be necessary to minimize the adverse effects of the waiver upon persons subject to involuntary exposure to secondhand smoke and to ensure that the waiver is consistent with the general purpose and intent of this article. Any waiver granted pursuant to this section shall be valid for a period of not more than 24 months and may be renewed upon reapplication. Applications for renewal shall be reviewed in the same manner as provided for initial applications.

1/2/03