

MEDFORD BOARD OF HEALTH

Regulation 17: Restricting the Sale and Use of Tobacco and Nicotine Delivery Products to Minors, the Workplace and Municipal Properties

A. PURPOSE

The purpose of this regulation is to legally empower the Medford Board of Health to enforce requirements including and in addition to existing State and Federal laws and regulations for tobacco and nicotine delivery products sale and use. These regulations and laws are adopted by the Medford Board of Health in an effort to protect the health and safety of the Medford community.

B. AUTHORITY

This regulation is promulgated pursuant to the authority granted to the Medford Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".

C. DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business agent is an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

Compensation means money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

Customer service area means an area of the workplace that a business invitee may access.

Employee means an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a de minimus amount of time.

Employer is an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private or non profit which uses the services of one or more employees at one or more workplaces at any one time, including the commonwealth or its agencies, authorities or political subdivisions.

Enclosed means a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room or hallway.

Establishment means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods are sold.

First violation. The violation that comes after issuance of a warning from a duly authorized enforcement officer.

Freestanding display means any display of tobacco which is not attached to or on top of a checkout counter, or where distribution of the tobacco products is not directly controlled by an employee.

Lodging home means a dwelling or a part thereof which contains one or more rooming units in which space is let or sublet for compensation by the owner or operator to four or more persons. The residential portion of boarding houses, rooming houses, dormitories and other similar dwelling places are included in this definition. Hospitals, sanitariums, jails, houses of correction, homeless shelters and assisted living homes are not included in this definition.

Membership association means a not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreational or similar purpose and is comprised of members who collectively belong to:

- (1) A society, organization or association of a fraternal nature that operates under the lodge system and having one or more affiliated chapters or branches incorporated in any state; or
- (2) A corporation organized under G.L. c 180 et seq.; or
- (3) An established religious place of worship or instruction in the Commonwealth of Massachusetts whose real or personal property is exempt from taxation; or
- (4) A veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition unless individual membership is required for all members of the association for a period of not less than 90 days.

Municipal buildings means any and all buildings owned or occupied by any department or agency of the city.

Outdoor space means an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Public building means a building owned by the Commonwealth of Massachusetts or any political subdivision thereof or an enclosed indoor space occupied by a state agency or department of the commonwealth which is located in a building not owned by the commonwealth.

Public transportation conveyance means a vessel or a vehicle used in mass public transportation or in transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, passenger ferry boat, water shuttle or other equipment used in public transportation owned by, or operated under the authority of the Massachusetts Bay Transportation Authority, Massachusetts Port Authority; state transportation department; or a vehicle or vessel open to the public that is owned by or operated under the authority of a business, including tour vehicles or vessels, enclosed ski lifts or trams, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle or vessel not open to the public or not used for the transportation of the public during times of use, including a private passenger vehicle, a private charter or rental of a limousine, bus or van or the private rental of a boat or other vessel, shall not be considered a public transportation conveyance.

Residence means the part of a structure used as a dwelling including without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin or cottage, a residential unit in a governmental public housing facility and the residential portions of a school, college or university dormitory or facility. A residential unit provided by an employer to an employee at a place of employment shall be considered a residence if the unit is an enclosed indoor space used exclusively as a residence and other employees, excluding family members of the employee or the public, has no right of access to the residence. For the purposes of this definition, a hotel, motel, inn, lodge or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

Retail food establishment means any establishment commonly known as a supermarket or grocery store in which the primary activity is the sale of food items to the public for off-premises consumption.

Retail tobacco store means an establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to customers, but not for resale, tobacco products and 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 appropriate authority of the City of Medford.

Schools means any public or private educational facility with one or more students.

Smoking or smoke means the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be

combusted or inhaled. This includes all activities such as inhaling, exhaling, chewing, burning or carrying any lighted cigar, cigarette, weed or other plant in any manner or in any form.

Smoking bar mean an establishment that occupies exclusively an enclosed indoor space and that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises, derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of the tobacco products; prohibits entry to a person under 18 years of age during the time when the establishment is open for business; prohibits any food or beverages not sold directly by the business to be consumed on the premises; maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority of the City of Medford; and maintains a valid permit to operate a smoking bar issued by the Department of Revenue of the Commonwealth of Massachusetts.

Tobacco means cigarettes, chewing or spitting tobacco, snuff or tobacco in any of its forms.

Workplace means an indoor area, structure or facility or a portion thereof at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Work space or work spaces means an enclosed area occupied by an employee during the course of his employment.

D. SMOKING IN SCHOOLS AND MUNICIPAL BUILDINGS; WORKPLACES AND PUBLIC PLACES.

Schools and municipal buildings and grounds.

(1) School buildings. Smoking by any individual, including school personnel, shall be prohibited in all schools within the city. This section shall be effective 24 hours a day, seven days a week, and shall include private offices, private areas, school grounds, school buses and all school events such as banquets, award dinners, dances and indoor athletic events.

(2) Municipal buildings. Smoking by any individual, including city personnel, shall be prohibited in all municipal buildings within the city. This section shall be effective 24 hours a day, seven days a week, and shall include private offices, private areas, municipal building grounds and events within municipal buildings.

(3) Parks, commons, playgrounds and outdoor recreational areas. Smoking by an individual is prohibited in all parks, playgrounds and outdoor recreational areas except those areas as may be designated by the board of park commissioners as areas where smoking is permitted. This section shall be effective 24 hours a day, seven days a week.

(4) Hormel stadium. Smoking by an individual is be prohibited at Hormel Stadium including all grounds appurtenant to the stadium and all events at the stadium except those areas as may be designated by the Hormel Stadium Commission as areas where smoking is permitted. This section shall be effective 24 hours a day, seven days a week.

(5) Penalty for violation. Any person who smokes in a prohibited or nonsmoking area shall be fined as follows:

- a. First violation, not less than \$100.00;
- b. Second violation, not less than \$150.00;
- c. Third violation, not less than \$200.00; and
- d. Fourth and subsequent violations as provided in section 1-13, but not less than \$250.00.

Workplace and public places.

(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

(2) Smoking shall be prohibited in workplaces, work spaces, common work areas, classrooms, conferences and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafes, coffee shops, food courts or concessions, supermarkets or retail food outlets, bars, taverns or in a place where food or drink is sold to the public and consumed on the premise as part of a business required to collect state meal tax on the purchase of the same; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena or stadium open to the public; or in a school, college, university, museum, library, health care facility as defined in section 9C of G.L. chapter 112, group or child care center, school age child care center, family child care center, school age day or overnight camp building, or on premises where activities are licensed under section 38 of G.L. chapter 10 or in or upon any public transportation conveyance or in any airport, train station, bus station, transportation passenger terminal or enclosed outdoor platform.

(3) Exemptions: Smoking may be permitted in the following places and circumstances:

- a) Private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age day care center, school age day or overnight camp, or a facility licensed by the Office of Childcare Services or as a health care related office or facility;
- b) Premises occupied by a membership association, if the premises is owned or under a written lease for a term of not less than 90 consecutive days by the association during the

time of the permitted activity if the premises are not located in a public building; but no smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

- i) Open to the public; or
 - ii) Occupied by a non-member who is not an invited guest of a member or an employee of the association; or
 - iii) Rented from the association for a fee or other agreement that compensates the association for the use of such space.
- c) Smoking may be permitted in an enclosed indoor space of membership associations at all times if the space restricted by the association to admittance only of its members, the invited guest of a member and the employees of the membership association. A person who is contract employee, temporary employee or independent contractor shall not be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system and is visiting the affiliated association shall be an invited guest for the purposes of this subsection.
- d) A guest room in a hotel, motel, inn or lodging home that is designed and normally used for sleeping and living purposes that is rented to a guest and designated as a smoking room.
- e) A retail tobacco store, if the store does not have a food permit of any type and if the store maintains a valid permit for the sale of tobacco products issued by the appropriate authority of the city. All required permits shall be displayed in a conspicuous manner, visible at all times to the patrons of the establishment.
- f) By a theatrical performer upon a stage or in the course of a professional film production if the smoking is part of a theatrical production and permission has been obtained from the appropriate authority of the city.
- g) By a person, organization or other entity that conducts medical or scientific research on tobacco products, if the research is conducted in an enclosed space not open to the public, in a laboratory facility at an accredited college or university or in a professional testing laboratory as defined by regulations promulgated by the Department of Public Health.
- h) Religious ceremonies where smoking is a part of the ritual.
- i) An outdoor space with a structure if there are no food permits and no food sales and if the outdoor space has a structure capable of being enclosed by walls or covers. Regardless of the materials or the removable nature of the walls or covers, the space will be considered enclosed when the walls or covers are in place. All outdoor spaces shall be physically separated from an enclosed work space. If windows, siding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed work space. If the windows, siding or folding windows or doors or other fenestrations are opened or

otherwise do not prevent the migration of smoke into the work space, the outdoor space shall be considered an extension of the enclosed work space and subject to this section.

- j) A nursing home licensed pursuant to section 71 of G.L. c 111 and any acute care substance abuse treatment center under the jurisdiction of the Commonwealth of Massachusetts may apply to the Board of Health of the City of Medford for designation of part of the facility as a residence. All applications shall designate the residential area of the facility. The residential area shall not contain an employee workspace, such as offices, restrooms or other areas used primarily by employees. The entire facility may not be designated a residence. The designated residential area must be for the sole use of permanent residents of the facility. No temporary or short-term resident may reside in the residential portion of the facility. All areas in the designated residential area in which smoking is allowed shall be conspicuously designated as smoking areas and be adequately ventilated to prevent the migration of smoke to non-smoking areas. The facility shall provide suitable documentation, acceptable to the Board of Health of the City of Medford, that the facility is a permanent domicile of the residents residing in that portion of the facility; that information on the hazards of smoking and second hand smoke have been provided to all residents and that smoking cessation aids are available to all residents who use tobacco products. The designated area shall be in conformance with the smoking restriction requirements of section 72X of G.L. c. 111 and 105 CMR 150.015 (D)(11)(b). All residential areas shall be clearly designated as such and shall not be altered or otherwise changed without the express written approval of the city board of health. All areas of a nursing home not designated as a residence shall comply with this section. The nursing home shall make reasonable accommodations for an employee, resident or visitor who does not wish to be exposed to tobacco smoke. Upon compliance with this section, submission of the required documentation and satisfactory inspection, the city board of health shall certify the designated portion of the facility as a residence. The certification shall be valid for one year from the date of issuance. No fewer than thirty days before the expiration of the certification, the facility may apply for recertification. If the city board of health does not renew the certification before its expiration or provide notice that it has found sufficient cause to not recertify the residence portion of the nursing home as such, the certification shall be considered to continue until the time that the city board of health notifies the nursing home of its certification status.
- k) A designated smoking room in a hotel, motel, inn, bed and breakfast and lodging home shall be clearly marked as a designated smoking room on the exterior of all entrance from a public hallway and public spaces; and in the interior of the room. Instead of marking each room, an establishment may designate an entire floor of residential rooms as smoking. The floor shall be conspicuously designated as smoking at each entranceway on to the floor. Smoking shall not be allowed in the common areas and of the floor, such as halls, vending areas, ice machine locations and exercise areas and every area in which smoking is prohibited by law shall have "no smoking" signs conspicuously posted so that

the signs are clearly visible to all employees, customers, or visitors while in the workplace.

- 1) A retail tobacco store that permits smoking on the premises shall post in a clear and conspicuous manner, a sign at each entrance warning persons entering the establishment that smoking may be present on the premises; of the health risks associated from second hand smoke; and, that persons under the age of 18 years of age may not enter the premises. Every area in which smoking is prohibited by law shall have "no smoking" signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.
- (4) Posting: Every area in which smoking is prohibited by law shall have "no smoking" signs conspicuously posted so that the signs are clearly visible to all employees, customers, or visitors while in the workplace.
 - a) Additional signs may be posted in public areas such as, The following areas: lobbies; hallways; cafeterias; kitchens; locker rooms; customer service areas; offices where the public is invited; conference rooms; lounges; waiting areas; and elevators.
 - b) It shall be the responsibility of the establishment to ensure that the appropriate signage is displayed and that an individual or group renting the space enforces the prohibition against smoking.
 - (5) Nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ordinance or by-law or any fire, health or safety regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth or any department, agency or political subdivision of the commonwealth.
 - (6) An individual, person, entity or organization subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation, to a person, entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint or furnishing information during any period of work or time of employment, shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about such place of work or to the public.
 - (7) An owner, manager or other person in control of a building, vehicle or vessel who violates this regulation, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of \$100.00 for the first violation; \$200.00 for the second violation occurring within two years of the date of the first offense; and \$300.00 for a third or subsequent violation with two years of the second violation. Each calendar day on which a violation occurs shall be considered a separate offense. If an owner, manager or other person in control of the building, vehicle or vessel violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the department of public health, the local board of health may revoke or suspend the license to operate and shall send notice of

revocation or suspension to the department of public health. The department of public health shall promulgate regulations to implement this section including, but not limited to notice, collection and reporting of the fines or license action, and defining uniform standards that warrant license suspension or revocation.

E. SMOKING IN RETAIL FOOD ESTABLISHMENTS.

Smoking by any individual, including employees, customers and guests, in retail food establishments shall be prohibited.

F. RETAIL SALE OF TOBACCO PRODUCTS; PERMITS; DISPLAY; PENALTIES.

(a) *Permit required; issuance; posting; renewal; transferal.* No person, firm, corporation, establishment or agency shall sell tobacco products within the city without a valid tobacco sales permit issued, by the board of health's tobacco control department. The Medford Board of Health requires a \$150.00 non-refundable and non-transferable license application fee. No cash will be accepted. A check or money order payable to the City of Medford is required. Permits must be posted in a conspicuous place. Permits must be renewed annually and expires on December 31st of each year. A permit is nontransferable.

(b) *Conditions of permits.* Conditions of permits are as follows:

(1) No entity may sell any tobacco products in any of its forms to any person under the age of 18 or, not being his parent or guardian, may give any tobacco products in any of its form to any person under the age of 18 years.

(2) Compliance with M.G.L.A. c. 270, § 7 which states that signage must be conspicuously posted stating that it is illegal to sell tobacco to minors. Proper signs will be supplied by the tobacco control office of the city board of health.

(c) *Location of freestanding displays.* Freestanding displays of tobacco products shall be located only in areas of the retailer's place of business which are accessible to employees only. Retail tobacco stores are exempt from this subsection.

(d) *Mandatory annual training.* No permit will be issued without the owner and/or designated person in charge attending an annual training to be offered for free by the Medford Board of Health.

(e) *Penalties for violation of section.* Violations of this section shall be punished as follows:

(1) First violation, fine of up to \$100.00;

- (2) Second violation, fine of up to \$200.00 and/or suspension of permit for seven days;
- (3) Third violation, fine of up to \$300.00 and/or suspension of permit for 14 days; and
- (4) Fourth violation, fine of up to \$500.00 and/or suspension of permit for 30 to 60 days.

(f) *Suspension of permit.* Upon suspension of a tobacco sales permit, all tobacco products must be removed from the sales area for the duration of the suspension.

G. ENFORCEMENT

(a) The police department, the board of health, the tobacco control department or any designee of the mayor shall enforce this article, as written and as amended from time to time hereafter. Violations of this article shall be punishable by fines and penalties as provided in this article, and in accordance with M.G.L.A. c. 40, § 21D.

(b) Any person may register a complaint to initiate an investigation and enforcement with a local board of health, the department of public health, or the local inspection department or the equivalent.

(c) A fine or fee collected by the city under this section shall be used for the enforcement or for educational programs on the harmful effects of tobacco.

(d) Each local board of health, each local inspection department or its equivalent, and the alcoholic beverages control commission shall report annually to the commissioner of public health beginning January 1, 2006: the number of citations issued; the workplaces which have been issued citations and the number of citations issued to each workplace; the amount that each workplace has been fined; and the total amount collected in fines. The department of public health shall file a copy of the report with the clerks of the house of representatives and the senate.

H. APPEAL.

If enforcement of any provision of this article would do manifest injustice to any individual or entity, an appeal may be made to the board of health or, in the case of schools, may be made to the school committee. The decision made regarding the appeal may be further appealed in a court of competent jurisdiction.

I. SEVERABILITY

a) Each of these regulations shall be construed as separate to the end that, if any regulations, clause or phrase thereof, should be held invalid for any reason, the remainder of the regulations and all other regulations shall continue to be in force.

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