

City of Melrose Board of Health Regulation
PROHIBITING SMOKING and TOBACCO AND NICOTINE PRODUCTS USE IN
WORKPLACES and PUBLIC PLACES

SECTION 1 PURPOSE

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and

Whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and

Whereas the U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); and

Whereas public health authorities, including the Surgeon General and the National Cancer Institute, have found that smokeless tobacco use is hazardous to health and can lead to nicotine addiction; and

Whereas the National Cancer Institute states that chewing tobacco and snuff contain 28 cancer-causing agents and the U S National Toxicology Program has established smokeless tobacco as a “known human carcinogen;” and

Whereas, the National Cancer Institute and the International Agency for Research on Cancer report that the use of smokeless tobacco causes oral, pancreatic, and esophageal cancer; and now, therefore, the Board of Health recognizes the right of those who wish to breathe smokefree air and the adverse health effects of using smokeless tobacco and nicotine containing products establishes this regulation to protect and improve the public health and welfare.

SECTION 2 AUTHORITY

This regulation is promulgated under the authority granted to the Melrose Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing 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 . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

SECTION 3 DEFINITIONS

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

“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 the establishment.

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

“Customer service area”, an area of the workplace that a business invitee may access.

“Employee”, 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”, 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 City of Melrose.

“Enclosed”, a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.

“Lodging house”, a building containing four or more lodging units.

“Lodging unit”, One or more rooms for the semi permanent use of one, two, or three individuals not living as a single housekeeping unit and not having cooking facilities. “Lodging unit” shall include rooms in boardinghouses, lodging houses tourist homes or rooming houses. It shall not include convalescent, nursing or rest homes; dormitories of charitable, educational or philanthropic institutions; or apartments or hotels.

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

- i. a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or
- ii. a corporation organized under Massachusetts General Laws Chapter 180; or
- iii. an established religious place or worship or instruction in the City of Melrose whose real or personal property is exempt from taxation; or
- iv. a veterans’ organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 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.

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

“Public building”, a building owned by the City of Melrose or an enclosed indoor space occupied by a department or agency of the City of Melrose which is located in a building not owned by the City of Melrose

“Public transportation conveyance¹”, a vehicle used in mass public transportation or in the transportation of the public, including a train, passenger bus, school bus or other vehicle used to transport pupils, taxi, state transportation department; or a vehicle open to the public that is owned by, or operated under the authority of a business, including tour vehicles, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle not open to the public or not used for the transportation of the public during the 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 another vessel, shall not be considered a public transportation conveyance.

“Residence”, 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 to be 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, bed and breakfast or other similar public accommodation, hospital, nursing home or assisted living facility shall not be considered a residence.

“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 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 Melrose Board of Health.

“Smoking” or “smoke”, 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 and inhaled.

“Workplace”, an indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for an 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”, an enclosed area occupied by an employee during the course of his employment.

SECTION 4: SMOKING and USE OF TOBACCO and NICOTINE PRODUCTS PROHIBITED

(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, conference and meeting rooms, offices, elevators, hallways, medical facilities, nursing homes, cafeterias, employee lounges, staircases, restrooms, restaurants, cafés, 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 meals tax on the purpose; or in a train, airplane, theatre, concert hall, exhibition hall, convention center, auditorium, arena, or stadium open to the public; or in a school, colleges, university, museum, library, health care facility as defined in Section 9C of Massachusetts General Laws Chapter 112, group 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 Massachusetts General Laws 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) Smoking shall be prohibited in all outdoor areas of restaurants, bars, taverns and any other outdoor place where food, and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the public, served to the public, or otherwise consumed or carried by the public.

(4) A person shall not smoke or use a tobacco or nicotine containing product in a public building or in a building or in a vehicle or vessel owned, leased, or otherwise operated by the City of Melrose or in a space occupied by the City of Melrose which is located in another building, including a private office in a building or space mentioned in this sentence, or at an open meeting of a governmental body as defined in Section 11A of Massachusetts General Laws Chapter 30A, Section 23A of Chapter 39 and Section 9F or Chapter 34, or in a courtroom or courthouse.

(5) A person shall not use a tobacco or nicotine containing product on any playing field in the City of Melrose.

SECTION 5: EXEMPTIONS

Notwithstanding Section 4, smoking may be permitted in the following places and circumstances:

(1) Private residences; except during such time when the residence is utilized as part of a business as a group child care center, school age day care center, school age day or overnight camp, or a facility licensed by the Office of Child Care Services or as a health care related office or facility.

(2)(i) 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:

- a. open to the public; or
- b. occupied by a non-member who is not an invited guest of a member or an employee of the association; or
- c. rented from the association for a fee or other agreement that compensates the association for the use of such space.

(ii) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is 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 a 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.

(3) A guest room in a hotel, motel, inn, bed and breakfast 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 pursuant to Section 7 of this regulation.

(4) 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 if permission has been obtained from the Melrose Board of Health;

5) 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 regulation of the Department of Public Health;

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

(7) A Retail Tobacco Store

SECTION 6: SIGNAGE REQUIREMENTS

(1) 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 entrances 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 of the floor, such as halls, vending areas, ice machine locations and exercise areas and shall comply with Section 4.

(2) 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.

(3) 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.

(4) Approved signs and templates for signage design may be obtained from the Department of Public Health or the Melrose Board of Health.

(5) 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.

SECTION 7: ANTI-PREEMPTION

Nothing in this regulation 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 regulation shall preempt further limitation of smoking by the Commonwealth or any department, agency or political subdivision of the Commonwealth.

SECTION 8 ENFORCEMENT

(1) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:

- (i) \$100 for the first violation;
- (ii) \$200 for a second violation occurring within 24 months of the date of the first offense; and
- (iii) \$300 for a third or subsequent violation occurring within 24 months of the second violation.

(2) Each calendar day on which a violation occurs shall be considered a separate offense.

(3) If an owner, manager or other person in control of a building, vehicle violates this section repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Melrose Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(4) This regulation shall be enforced by the Board of Health and its designees.

(5) An individual or person who violates this regulation by smoking in a place where smoking is prohibited shall be subject to a civil penalty of

(i) \$100 for the first violation;

(ii) \$200 for a second violation occurring within 24 months of the date of the first offense; and

(iii) \$300 for a third or subsequent violation occurring within 24 months of the second violation.

(6) For violations of this regulation other than by smoking in a place where smoking is prohibited, as an alternative to criminal prosecution, such violations may also be considered civil violations. Each enforcing agency shall dispose of a civil violation of this section by the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law and City of Melrose Revised Ordinances Section 1-21.

(7) If an owner, manager or other person in control of a building or vehicle violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(8) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

(9) Pursuant to Massachusetts General Laws Chapter 270, Section 22, the supreme judicial court or the superior court shall issue appropriate orders to enforce this regulation at the request of the enforcing agency.

(10) The Melrose Board of Health 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.

(11) An individual, person, entity or organization subject to the smoking prohibitions of this regulation 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 or entity or organization or to an enforcement authority. Notwithstanding the foregoing, a person making a complaint of 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.

SECTION 9: SEVERABILITY

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

SECTION 10: CONFLICT WITH OTHER LAWS OR REGULATIONS

Nothing in the provisions of Section 4 of this regulation 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 other regulations.

SECTION 12: EFFECTIVE DATE

This regulation shall be effective as of June 1, 2019

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