

TOWN OF BELMONT

REGULATION PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES

SECTION 1: PURPOSE

The purpose of this regulation is to protect the health of the employees and general public in the town of Belmont.

SECTION 2: AUTHORITY

This regulation is promulgated under the authority granted to the town of Belmont Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “boards 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 “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 . . . 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:

“Adjacent”, contiguous or adjoining.

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

“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 (1) or more employees at one (1) or more workplaces, at any one (1) time, including the town of Belmont.

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

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

“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 Belmont 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.

“Smoking bar”, an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

“Workplace”, an indoor area, structure or facility and adjacent outdoor space, or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other 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 and adjacent outdoor space occupied by an employee during the course of his employment, including but not limited to, offices, customer service areas, common areas, patios, porches, decks, yards, loading docks, hallways, waiting areas, restrooms, lounges and eating areas.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in a Workplace in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law”).

(2) Smoking is also hereby prohibited in Smoking bars, Workplaces, Work spaces, as defined herein, and all outdoor seating areas adjacent to food service establishments where food is consumed.

SECTION 5: ENFORCEMENT

- (1) Whoever violates any provision of this Regulation may be penalized as follows:
 - (a) \$100 for the first violation;
 - (b) \$200 for a second violation occurring within twenty-four (24) months of the date of the first offense; and
 - (c) \$300 for a third or subsequent violation occurring within twenty-four (24) months of the second violation.

- (2) The monetary penalties set forth above may be by a non-criminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. This regulation may be enforced by any Town police officers or agents of the Town's Board of Health.

- (3) If an owner, manager or other person in control of a building, vehicle or vessel 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.

- 3) If an owner, manager or other person in control of an establishment commits three or more violations of this regulation within a 24 month period, any Board of Health permit held by the establishment may be suspended or revoked after a show-cause hearing with the Board of Health.

- (4) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health.

- (5) In lieu of the monetary penalties set forth above, whoever violates any provision of this Regulation may alternatively be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense.

- (6) The Board of Health may enforce these Regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

SECTION 6: 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 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation, nothing in 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 8: EFFECTIVE DATE

This **regulation** shall be effective as of April 1, 2010.

BOARD OF HEALTH

David B. Alper, D.P.M.

Donna S. David, R.N., M.N.

Robert M. Eisendrath, M.D.

Public Hearing held on
October 5, 2009.

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Approved as to Form by
Town Counsel on
March 3, 2010.