

Section 6A Tobacco – Restrictions on Use in Workplaces and Public Places

SECTION 6A1 PURPOSE

The following regulations restricting the use, sale and distribution of tobacco within Bedford are being adopted for the following reasons:

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac and vascular diseases, adverse birth outcomes, allergies and irritations to the eyes, nose and throat for both the smoker and nonsmoker exposed to environmental tobacco smoke.

Ongoing research attests to the health hazards of environmental tobacco smoke which is labeled as a Class A carcinogen. According to the federal government, 83% of workers' health complaints related to indoor air quality are linked to smoking. Elimination of environmental tobacco smoke will substantially reduce adverse health complications including, but not limited to severe headaches, upper respiratory ailments, cancer and heart disease.

This regulation is promulgated under the authority granted to the Bedford 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(2)(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 any political subdivision of the commonwealth.”

SECTION 6A2 DEFINITIONS

Unless otherwise noted below, the following terms shall have the following definitions throughout all of section 6.

- 6A2.1 Board means the Bedford Board of Health and shall include enforcement officer(s) as the Board designates to enforce the provisions of these regulations.
- 6A2.2 Employee means any individual who performs services for an employer in return for wages or profit.
- 6A2.3 Employer means any individual, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Bedford or any agency thereof, which regularly uses the services of one(1) or more employees.
- 6A2.4 Enclosed means a space bound by walls, with or without windows or fenestrations, enclosed by 1 or more doors and under a roof.
- 6A2.5 Indoor Sports Arena means any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports events.
- 6A2.6 Mobile Food Unit means a vehicle-mounted food establishment designed to be readily movable.
- 6A2.7 Public Place means an indoor area open to or used by the general public, including but not limited to the following facilities: atriums; auditoriums; automatic teller machines; automobile repair and maintenance establishments; gasoline stations; bed and breakfasts; licensed childcare locations

including childcare homes; educational facilities; elevators accessible to the public; clinics, hospitals, rest homes and nursing homes; retirement homes; game arcades; hair cutting and cosmetology establishments; inns, hotel and motel lobbies, stairwells, entranceways and public rest rooms; free standing kiosks; laundromats; libraries; municipal buildings; museums; schools; school buses; retail stores; retail food establishments; indoor sports arenas; theaters; public transit facilities; and any clubs or rooms when used for public meetings.

6A2.8 Retail Store means any establishment selling goods or articles or personal services to the public.

6A2.9 Smoking means the lighting of any cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco product designed to be combusted and inhaled.

6A2.10 Tobacco Product means cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, or tobacco in any of its forms.

6A2.11 Workplace means an indoor area, structure or facility or a portion thereof, at which one (1) 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.

6A2.12 Work space or work spaces means an enclosed area occupied by an employee during the course of his/her employment.

SECTION 6A3 RESTRICTIONS on USE(s) of TOBACCO

6A3.1 SMOKING PROHIBITED

6A3.1.1 It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

6A3.1.2 Smoking shall be prohibited in enclosed workplaces, work spaces, common work areas, public places, classrooms, conference and meeting rooms, offices, elevators, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms, restaurants, cafés, coffee shops, food courts or concessions, mobile food unit, 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.

6A3.1.3 Smoking shall be prohibited in the area within fifteen feet of an entranceway to an enclosed workplace and/or an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.

6A3.1.4 A person shall not smoke in a municipal building or within fifteen feet of a municipal building or in a vehicle or vessel owned, leased, or otherwise operated by the town of Bedford, or in a space occupied by the town of Bedford 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.

6A3.1.5 It shall be unlawful for any person having control of any premises upon which smoking is prohibited by this regulation to permit, or for his or her agent to permit, a violation of this regulation.

6A3.1.6 Each person having control of premises upon which smoking is prohibited by these regulations, or his or her agent or designee, shall conspicuously display upon the premises signs reading "Smoking Prohibited".

6A3.2 HOTELS, MOTELS, INN ROOMS RENTED TO GUESTS

6A3.2.1 Hotels, motels and inns shall provide both smoking and non-smoking rooms as requested by guests. The rooms so designated will be posted as smoking prohibited or smoking permitted. Customers seeking accommodations will be routinely advised of the availability of non-smoking rooms by check-in personnel. Smoking rooms may be designated by the proprietor(s) or other person(s) in charge of a hotel/motel/inn and may not exceed 50% of the total number of rooms licensed for guests. The non-smoking rooms may not be located between smoking rooms. Non-smoking room locations shall be so situated as to utilize physical barriers and/or ventilation systems to minimize involuntary exposure to tobacco smoke.

SECTION 6A4 OUTDOOR SPACES

6A4.1 OUTDOOR SPACES

6A4.1.1 If an 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 doors, windows, sliding 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 work space. If the windows, sliding 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.

6A4.1.2 School grounds: No person shall smoke or use tobacco in any of its forms on school grounds or on school playing fields.

6A4.1.3 No person shall smoke or use tobacco in any of its forms on the following town-owned recreation areas/land:

- a) swimming areas, including Springs Brook Park.
- b) recreational playgrounds and athletic fields.

SECTION 6A5 EXEMPTIONS

6A5.1 SMOKING PROHIBITION - EXEMPTIONS

Notwithstanding Section 6.3A, 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 6A3.2.1 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 Bedford Board of Health.

SECTION 6A6 ENFORCEMENT and PENALTIES

6A6.1 The Bedford Board of Health or its enforcement officer(s) shall enforce these regulations.

6A6.2 Any person or entity aggrieved by the failure or refusal of any person to comply with or enforce any of the provisions of these regulations may complain in writing to the Board. The enforcement officer or designee shall respond in writing within thirty days to the complainant.

6A6.3 Violations of these regulations may be punishable by maximum fines of up to \$1,000. in accordance with Massachusetts General Laws, Chapter 111, Section 31 and additionally as may be provided for by law, i.e., recovery of all Town expenses incurred as a result of and associated with the violation. Each day or part thereof that such violation continues shall constitute a separate punishable offense. The following fine schedule will be used:

- 1.) \$100 per violation for a person who smokes in a public place.
- 2.) \$100 per day for the first violation for any proprietor(s) or other person(s) in charge of a public place or workplace who fail(s) to comply.
- 3.) \$200 per day for any proprietor(s) or other person(s) in charge of a public place or workplace for the second violation occurring within 2 years of the date of the first offense.
- 4.) \$300 per day for any proprietor(s) or other person(s) in charge of a public place or workplace for the third violation occurring within 2 years of the second violation.

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6A6.3.1 In addition to fines, the Board of Health may impose the following penalties for violation of any section of these tobacco control regulations: suspend any license issued by the Board of Health for two days for any violation. Each day or part thereof that such violation continues shall constitute a separate punishable offense.

6A6.3.2 Upon determination by the Board that a violation of these regulations has been committed or allowed to occur, the Board shall notify the responsible person/entity in writing. Said notification shall state the violation and any associated penalty, include a time allowed to correct the violation and corrective action(s) which would be acceptable to the Board.

6A6.3.3 Municipal employees who violate these regulations while on duty, after an initial notification, will be subject to disciplinary action in accordance with personnel policies or collective bargaining agreements.

6A6.3.4 This regulation may be enforced by the non-criminal method of disposition procedures contained in G.L. ch. 40, § 21D.

SECTION 6A7 SEVERABILITY

6A7.1 If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

SECTION 6A8 CONFLICT WITH OTHER LAWS OR REGULATIONS

6A8.1 Notwithstanding the provisions of Section 6A3 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 6A9 EFFECTIVE DATE

6A9.1 This regulation shall be effective as of June 1, 2006.