

**CITY OF REVERE, MASSACHUSETTS  
BOARD OF HEALTH  
WORKPLACE SMOKING RESTRICTIONS**

A. Statement of 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 environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning cigarettes, causes the death of 53,000 Americans each year (McGinnis JM, Foeger W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212); and whereas in 2000, the Public Health Service's National Toxicology Program listed environmental tobacco smoke as a known human carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997); now, therefore, the Board of Health of Revere recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in workplaces.

B. Authority: This regulation is promulgated under the authority granted to the Revere Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations."

C. Definitions: For the purposes of this regulation the following words shall have the meanings respectively ascribed to them by this paragraph:

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 said establishment.

Board: The Board of Health of the city of Revere.

City: The city of Revere.

Employee: Any person who performs services for an employer.

Employer: A person, partnership, association, corporation, trust, or other organized group of individuals, including the city of Revere or any agency thereof, which utilizes the services of one (1) or more individual employees.

Enclosed: A space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, halls and vehicles.

Definition of Long Term Care Facility: A convalescent home, nursing home, rest home or charitable home for the aged, licensed under the provisions for Section 71 of Massachusetts General Laws Chapter 111.

**Definition of Nursing Home:** Any institution or facility providing nursing care which is licensed under Massachusetts General Laws Chapter 111, Section 71 or under any other law of the commonwealth, including but not limited to convalescent homes, charitable homes for the aged.

**Person:** Any individual, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or restaurant or retail store, or the business agents or designees of any of the foregoing.

**Private Club:** A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

**Public place:** Any building or facility owned, leased, operated or occupied by the municipality, including school buildings or grounds and municipal vehicles; any enclosed area open to the general public including, but not limited to, retail stores, retail food stores, libraries, museums, theaters, banks, laundromats, indoor sports arenas and/or recreational facilities, auditoriums, bingo/beano, inn/hotel/motel lobbies, private and public educational facilities, shopping malls, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public and licensed child-care locations.

**Public transportation vehicle:** Buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the city.

**Smoking:** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other lighted tobacco product in any form.

**Third Party Contractor:** Any person or company who performs services for a membership or lessees.

**Workplace:** Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer.

**D. Smoking Prohibited:**

1. Smoking is prohibited in all workplaces, all public places, and all public transportation vehicles.

2. It shall be unlawful for any employer or other person having control of the premises upon which smoking is prohibited by this regulation, or the business agent or designee of such person, to permit a violation of this regulation.

E. Posting notice of prohibition:

Every person having control of premises upon which smoking is prohibited by and under the authority of this Board of Health Regulation shall conspicuously display upon the premises and at all entrances "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) and "by order of the Board of Health" with a phone number specified by the Board of Health. No person shall remove a sign posted under the authority of this Board of Health Regulation.

F. Exceptions:

Notwithstanding the provisions of Paragraph D of this regulation, smoking may be permitted in the following places and/or circumstances:

1. Private residences, except those portions used as a child care or health care office when operating as such.
2. Hotel and motel rooms rented to guests that are designated as "smoking rooms", provided that no more than 25% of rooms shall be allocated as such. A room so assigned shall have signs posted indicating that smoking is allowed therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the Board of Health.
3. Private clubs if there are no paid employees. When a private club is open to the general public, that portion of said establishment open to the general public must be smokefree, separately enclosed and shall have self-closing doors. Catered events must be smokefree, including the kitchen area and any areas a third party contractor must pass through.
4. Smoking by residents and patients of nursing homes and long-term care facilities may be permitted in one separately enclosed designated smoking room, provided that the air in the designated smoking room does not interfere with the smoke-free air in the remainder of the facility.

The Revere Board of Health might pass and adopt more restrictive smoking regulations in the future, including a complete prohibition.

#### G. Violations:

It shall be the responsibility of the employer and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his/her place of business or any person in violation of any section of this regulation. The violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00).
2. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200.00).
3. In the case of three or more violations within 24 months of the current violation, a fine of three hundred dollars (\$300.00).
4. Any establishment who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

#### H. Enforcement:

As an alternative to initiating criminal proceedings, violations of this Board of Health Regulation may be enforced in the manner provided in MGL chap 40, sect. 21D, by the Board of Health and its designees. Any fines imposed under the provisions of this Board of Health Regulation shall enure to the City of Revere for such use as the city may direct.

One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation. Any citizen who desires to register a complaint under this regulation may request that the Board of Health initiate an investigation.

#### I. Non-Criminal Disposition:

Whoever violates any provision of this regulation the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. Non-criminal disposition authority can be found at city ordinance Chapter 1-7b.

Each day on which any violation exists shall be deemed to be a separate offense.

Penalty:	\$100 for the first offense
	\$200 for the second offense
	\$300 for the third or subsequent offense

Enforcing Persons: Revere Board of Health and its designees

J. Severability:

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.

K. Conflict with Other Laws or Regulations:

Notwithstanding the provisions of the foregoing Paragraph D 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.

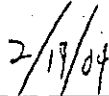
L. Effective Date:

This regulation was adopted by the Revere Board of Health on 2/19/04

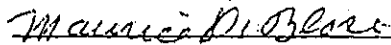
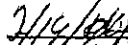
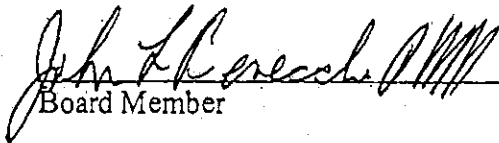
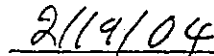
This regulation shall be effective as of 8/2/4



Eric Weil, M.D., Chair



Date

  
Board Member  
Date  
Board Member  
Date

**105 CMR 661.000: Regulations Implementing Chapter 270, s.22**

661.001: Purpose

The purpose of 105 CMR 661.000 is to provide standards for the implementation of c. 270, s.22, which establishes restrictions on smoking in the workplace. The requirements in the regulations are intended to clarify or supplement the statutory requirements. Nothing in these regulations shall be interpreted as limiting or preempting further restrictions on smoking by any local by-law, ordinance or regulation.

661.002: Authority

105 CMR 661.000 is authorized and in part mandated by c. 270, s.22.

661.003: Definitions

Membership Association shall be as defined in c.270, s.22.

Outdoor space shall be as defined in c.270, s.22.

661.100: Smoking Restrictions in Membership Associations

(A) Smoking shall be prohibited in an enclosed indoor space of a membership association during the time that the space is:

- (1) open to the public. A membership organization shall be regarded as open to the public when it has signs or advertising inviting or encouraging non-members to enter the premises or takes other action that may reasonably be regarded as inviting or allowing non-members to enter the premises;
- (2) occupied by a non-member who is not a guest. A non-member shall be regarded as a guest if entering the premises:
  - (a) accompanied by a member, provided the member remains on the premises while the guest is present; and
  - (b) signing a guest register that clearly specifies the name and address of the guest and the inviting member;
- (3) rented from the association for a fee or other compensation; or
- (4) occupied by a contract employee, temporary employee or independent contractor.

(B) Smoking may be permitted if the premises are occupied solely by the following:

- (1) members of the association. A person shall not be regarded as a member if entering the premises under terms of a membership that differ in duration, cost or privileges from the terms of a full membership in the association;
- (2) one or more salaried employees of the association;
- (3) invited guests of the members, as determined in accordance with

105.661.100(A); and

- (4) visiting members of an affiliated chapter or branch of a fraternal lodge organization.

(C) Smoking may be permitted in a distinct part of the premises of a membership association, provided that this part:

- (1) is physically separated from any area open to the public or occupied by a non-member who is not a guest. The separation shall be sufficient to prevent any migration of smoke into the public area. Any doors separating the areas shall be self closing;
- (2) is occupied solely by those persons specified in 105 CMR 661.100(B). The membership association shall adopt and effectively implement a policy that ensures only such persons are permitted to enter the part of the premises where smoking is permitted; and
- (3) there are no signs inviting or encouraging the public or non-members who are not guests to enter.

661.200: Smoking in Outdoor Spaces

Smoking may be permitted in an outdoor space, provided that the outdoor space is physically separated from an enclosed work space and there is no migration of smoke into the work space, in accordance with the following requirements.

- (A) As provided in c.270, s.22, any outdoor space that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or covers, shall be regarded as an enclosed space when the walls or covers are in place.
- (B) The outdoor space shall be open to the air at all times. For purposes of 105 CMR 661.000, this shall mean that the space has thorough, unobstructed circulation of outside air to all parts of the outdoor space. An outdoor space shall be presumed to meet this test if:
  - (1) the space has a ceiling and at least one half of the total surface area of the walls and other vertical boundaries of the space permits unobstructed flow of outside air into the space; or
  - (2) the space has no ceiling and no more than two walls or other vertical boundaries of the space that obstruct the flow of air into the space exceed eight feet in height.
- (C) For purposes of 105 CMR 661.000, a ceiling shall include any top or covering that is placed or may be placed over a space, or any other structure or arrangement above the space (including substantial coverage by umbrellas or awnings) that may impede the flow of air into the space, regardless of the type or nature of the materials or the partial or removable nature of the covering.
- (D) The local board of health shall be notified in writing prior to initiating construction or renovation of an outdoor space for the purpose of

permitting smoking, if such construction or renovation requires notification of the local building department or a licensing authority.

661.300: Professional Testing Laboratories

Medical or scientific research on tobacco products may be conducted in a professional testing laboratory, provided that the laboratory notifies the Department of its activities, in accordance with policies and procedures established by the Department, and provides such documentation as specified by the Department of compliance with federal regulations on Protection of Human Subjects, 34 CFR Part 97.

661.400: Enforcement

(A) The Department and the Alcoholic Beverages Control Commission is hereby authorized to enforce the provisions of c.270, s.22 through use of the non-criminal disposition procedures specified in c.40, s.21D.

(1) The fine imposed pursuant to this section shall be \$100 for the violation, \$200 for a second violation occurring within 2 years of the date of the first violation, and \$300 for a third or subsequent violation within 2 years of the second violation. Each calendar day on which a violation occurs shall be considered a separate violation.

(2) The disposition of fines assessed in accordance with 105 CMR 661.400 shall be in accordance with c.29, s.2.

(3) As specified in c.270, s.22, each city or town shall file with the Department, on an annual basis in accordance with procedures established by the Department, a report indicating the number of citations issued for non-compliance with c.270, s.22 and these regulations, the basis for the citations, fines assessed and collected, and such additional information about enforcement as specified by the Department.

(B) In accordance with c.270, s.22, local boards of health shall have the authority to revoke or suspend a license of a building, vehicle or vessel to operate if an owner, manager or other person in control is found to repeatedly violate the requirements of c.270, s.22 ("egregious non-compliance"). For purposes of 105 CMR 661.000, 5 or more citations from enforcing authorities within 2 years of the first citation, or such violations as specified in regulations of the board of health, shall constitute egregious non-compliance. Such action shall be taken in accordance with local board of health regulations for the suspension or revocation of a license or permit.