

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 661.000: REGULATIONS IMPLEMENTING M.G.L. c. 270, § 22

Section

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661.001: Purpose

The purpose of 105 CMR 661.000 is to provide standards for the implementation of M.G.L. c. 270, § 22, which establishes restrictions on smoking in the workplace. The requirements in 105 CMR 661.00 are intended to clarify or supplement the statutory requirements. Nothing in 105 CMR 661.000 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 M.G.L. c. 270, § 22.

661.003: Definitions

Membership Association shall be as defined in M.G.L. c.270, § 22.

Outdoor Space shall be as defined in M.G.L. c. 270, § 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 CMR 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;

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- (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.

- (1) In accordance with M.G.L. c. 270, § 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.
- (2) 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:
 - (a) 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
 - (b) 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.
- (3) 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.
- (4) 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 M.G.L. c. 270, § 22 through use of the non-criminal disposition procedures specified in M.G.L. c. 40, § 21D.
 - (1) The fine imposed pursuant to 105 CMR 661.400 shall be \$100 for the violation, \$200 for a second violation occurring within two years of the date of the first violation, and \$300 for a third or subsequent violation within two 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 M.G.L. c. 29, § 2.
 - (3) As specified in M.G.L. c. 270, § 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 M.G.L. c. 270, § 22 and 105 CMR 661.000, the basis for the citations, fines assessed and collected, and such additional information about enforcement as specified by the Department.

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(B) In accordance with M.G.L. c. 270, § 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 M.G.L. c. 270, § 22 (“egregious non-compliance”). For purposes of 105 CMR 661.000, five or more citations from enforcing authorities within two years of the first citation, or such violations as specified in regulations of the board of health, shall constitute egregious on-compliance. Such action shall be taken in accordance with local board of health regulations for the suspension or revocation of a license or permit.

REGULATORY AUTHORITY

105 CMR 661.000: M.G.L. c. 270, § 22.

NON-TEXT PAGE