

# TOWN OF CONCORD

## SMOKE FREE WORKPLACE BYLAW

### **Section 1. Purpose**

The Town of Concord does hereby find and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in food establishments; (2) to protect the right of non-smokers to breathe smoke-free air in such establishments; and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

### **Section 2. Authority**

This bylaw is adopted by the Town of Concord under its Home Rule powers, its police powers to protect the public health, safety and welfare, and its authority under Massachusetts General Laws, Chapter 40, §21.

### **Section 3. Severability**

Each section, paragraph, sentence, clause, phrase and any other portion of this bylaw shall be construed as separate to the end that if any portion thereof shall be held invalid for any reason, then the remainder of the bylaw shall remain in full force and effect.

### **Section 4. Definitions**

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

- 4.1 "Compensation" – money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.
- 4.2 "Employee" – an individual or person who performs a service for compensation for an 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.
- 4.3 "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 Concord.
- 4.4 "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.
- 4.5 "Outdoor space" – an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

- 4.6 “Retail Tobacco Store” – an establishment which is 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 Concord Board of Health.
- 4.7 “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.
- 4.8 “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, Section 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”.
- 4.9 “Workplace” – 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.
- 4.10 “Work space or work spaces” – an enclosed area occupied by an employee during the course of his employment.

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

#### **Section 5. Prohibitions**

- 5.1 It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.
- 5.2 Smoking is hereby prohibited in Concord in accordance with MGL, Ch. 270, Section 22 (commonly known as the “Smoke-free Workplace Law”).

Pursuant to MGL, Ch. 270, Section 22(j) smoking is also hereby prohibited in Tobacconist Shops (“Smoke Shops”), Smoking Bars, and Nursing Homes

#### **Section 6. Enforcement**

- 6.1 This bylaw shall be enforced by the Board of Health and its designees.
- 6.2 Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department of the equivalent.

- 6.3 The Board of Health shall have the authority to enforce this bylaw through the use of violation notices, administrative orders, or civil and criminal court actions. Violations may result in fines and other lawful penalties listed in this bylaw.

#### **Section 7. Penalties and Remedies**

- 7.1 Violations are subject to a fine in accordance with Appendix A of the Town's Non-Criminal Disposition Bylaw
- 7.2 Each calendar day on which violation occurs shall be considered a separate offense.
- 7.3 Violations of Section 5.2 shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21 D of Chapter 40 of Massachusetts General without an enabling ordinance or bylaw. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- 7.4 Violations of Section 5.3 may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- 7.5 If an owner, manager or other person in control of a building, vehicle, or vessel violates this bylaw 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.

#### **Section 8. Severability**

Each part of these regulations are constructed to be separate, such that if any section, sentence, item, clause, or phrase is held invalid for any reason, the remainder of the regulations shall continue in full force and effect.

#### **Section 9. Conflict with other Laws and Regulations**

Notwithstanding the provisions of Section 4 of this bylaw, nothing in this bylaw 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 10. Effective Date**

This bylaw shall take effect on January 2, 1996.

Article 48, Town Meeting, April 1995  
Article 68, Town Meeting, April 2003  
Article 64, Town Meeting, April 2006  
Article 67, Town Meeting, April 2010

