

**TOWN OF AMHERST  
REGULATION PROHIBITING SMOKING  
IN WORKPLACES and PUBLIC PLACES**

**SECTION 1 - Purpose**

The purpose of this regulation is to protect the health of employees in their workplaces from exposure to secondhand smoke and to protect the health of the general public from extended exposure to secondhand smoke in places where they congregate. Scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke and that it causes disease and premature death in children and adults.<sup>1, 2, 3</sup>

**SECTION 2**

This regulation is promulgated under the authority granted to the Amherst Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards 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 “[n]othing 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**

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

“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 perform 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 Amherst.

“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.

“Municipal Building”, any building or facility owned, operated, leased or occupied by the Town, including but not limited to, Town Hall, Bangs Community Center, Department of Public Works, Police and Fire Stations.

“Registered Event”, any event for which a reservation has been obtained from the Town of Amherst for the use of Town owned outdoor property.

“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 Amherst 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”.

“Work place”, an indoor area, structure or facility or a portion thereof, at which 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.

“Work space or work spaces”, an area occupied by an employee during the course of his employment.

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 an enclosed workplace.
- (2) To the extent prohibited by M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law”) and 105 CMR 661, smoking is hereby prohibited in Amherst.
- (3) In addition to the prohibitions contained in M.G.L. Ch. 270, §22, M.G.L. Ch. 111, §31 and M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited:

- (a) in smoking bars;
- (b) in nursing homes as defined in M.G.L. Ch. 111, §71;
- (c) in vehicles controlled by an employer or used in furtherance of an employer's business;
- (d) in at least fifty percent of all Inn, Bed & Breakfast, Hotel and Motel Rooms (guest rooms permitting smoking must be permanently designated as smoking rooms);
- (e) in an enclosed work place which employs only the owner and no other employee if: (1) the work place is used to meet with or receive customers or clients, or (2) the work place shares a ventilation system with any other work place or public place;
- (f) in retail tobacco stores;
- (g) in all outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns;
- (h) in the area within twenty feet of any Municipal Building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty foot area; and
- (i) on Town-owned playgrounds and swimming areas;
- (j) on Town owned athletic fields during Registered Events.

#### **SECTION 5: ENFORCEMENT**

- (1) An owner, manager, or other person in control of a building or vehicle who violates this section by allowing smoking in a place where smoking is prohibited shall be punished by a fine of:
- (i) \$100 for the first violation;
  - (ii) \$200 for a second violation occurring within two (2) years of the date of the first offense; and
  - (iii) \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (2) Each calendar day on which a violation occurs shall be considered a separate offense.
- (3) This regulation shall be enforced by the Board of Health and its designees.
- (4) Violations of Section 4.2 shall, in accordance with M.G.L. Ch. 270, §22, be disposed by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- (5) Violations of Section 4.3 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.

(6) In addition to civil penalties, the Board may enforce these regulations by any means available under the laws of the Commonwealth including the initiation of a civil lawsuit to enjoin any violations of these regulations.

(7) If an owner, manager or other person in control of a building or vehicle violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may, pursuant to M.G.L. Ch. 270, §22(1) and in accordance with any other applicable law or regulation, revoke or suspend the license to operate and shall send notice of the revocation or suspension to the Department of Public Health.

(8) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department of the equivalent.

#### **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 as amended shall be effective as of June 1, 2010.

Originally passed by unanimous vote of the Amherst Board of Health on April 23, 2009.

Reviewed and Amended April 29, 2010.

Board of Health Members:

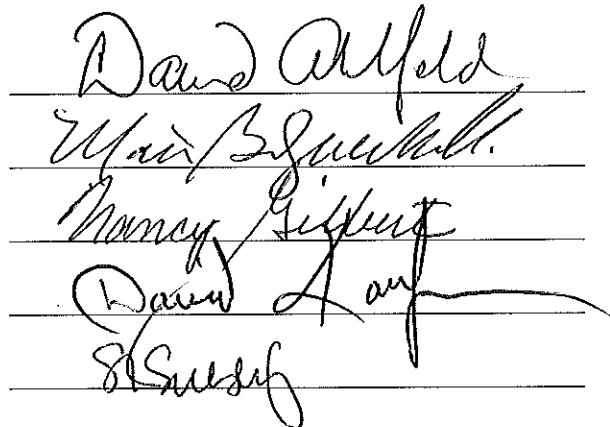
Chairman David Ahlfeld

Maria Bulzacchelli

Nancy Gilbert

David Kaufman M.D.

Sandy Sulsky

The image shows four handwritten signatures in cursive script, each written over a horizontal line. From top to bottom, the signatures are: David Ahlfeld, Maria Bulzacchelli, Nancy Gilbert, and Sandy Sulsky.

## ENDNOTES

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<sup>1</sup> Bondy, Susan; Ferrence, Roberta; and Zhang, Bo. *Do indoor smoke-free laws provide bar workers with adequate protection from secondhand smoke?* Preventive Medicine, 49:245-247

<sup>2</sup> Bernert, J. T.; Hall, J. C.; Kudon, L. H.; Naeher, L. P.; and St. Helen, G. *Assessment of Exposure to Secondhand Smoke at Outdoor Bars and Family Restaurants in Athens, Georgia, Using Salivary Cotinine.* Journal of Occupational and Environmental Hygiene, 6: 698-704 (2009.)

<sup>3</sup> U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General – Executive Summary* (2006) available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/>.