

Chapter 249: RULES RELATING TO SMOKING IN PUBLIC PLACES

1. Purpose

The Maine Center for Disease Control and Prevention has been authorized pursuant to 22 M.R.S.A. §§ 3 & 42 to enforce provisions of 22 M.R.S.A. § 1541 *et seq.* regarding smoking in public places. These Rules are intended to clarify the requirements for compliance with this law.

2. Definitions

As used in these Rules, unless the context indicates otherwise, the following terms and phrases have the following meanings.

- A. **Club.** "Club" means a reputable group of individuals, including a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004), incorporated and operating in a bona fide manner solely for purposes of a recreational, social, patriotic or fraternal nature and not for pecuniary gain, which by indicia of permanent status has:
1. Been in continuous operation and existence;
 2. Regularly occupied, as owner or lessee, a suitable clubhouse or facility for use of members;
 3. Held regular meetings;
 4. Conducted its business through regularly elected officers;
 5. Charged and collected dues from members;
 6. Adopted a charter and bylaws clearly defining the purpose of the organization; and
 7. Operated with selective membership criteria.
- B. **Designated smoking area.** "Designated smoking area" means an enclosed area, where permitted by law, designated as a place for smoking. A designated smoking area must be designed to prevent smoke escaping from the designated smoking area into an enclosed area of a public place.
- C. **Enclosed area.** "Enclosed area" means a space between a floor and a ceiling that is demarcated on all sides by walls, windows, shutters, doors or passageways. A partition, partial wall or office divider is a demarcation of an enclosed area if it extends from the floor to within 4 feet of the ceiling or from the ceiling to within 4 feet of the floor.

- D. **Environmental tobacco smoke.** "Environmental tobacco smoke" is tobacco smoke given off by the burning end of a cigarette, pipe or cigar, a mixture of smoke from a combination of these sources, and smoke that is exhaled by a smoker.
- E. **Invited guest.** "Invited guest" means an individual who is 1) a relative or established acquaintance of a member of a club and who is continuously accompanied by the member; or 2) a relative, established acquaintance, or friend or relative of an established acquaintance of the host of a private function.
- F. **Member.** "Member" means a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member.
- G. **Not open to the public.** "Not open to the public" means open only to: 1) employees; 2) invited guests of private functions, e.g., wedding receptions; and 3) members or invited guests of members, accompanied by a member, of a club. Note: A club holding a public function is considered to be open to the public.
- H. **Public place.** "Public place" means any place not open to the sky into which the public is invited or allowed. Except as provided in 22 M.R.S.A. §1542(2)(J) and Section 3(B)(7) of these Rules, a private residence is not a public place.
- I. **Smoking.** "Smoking" includes carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off tobacco smoke.
- J. **Tobacco specialty store.** "Tobacco specialty store" means a retail business under 2,000 square feet in which at least 60% of the business's gross revenue for the last calendar year was derived from the sale of tobacco or tobacco-related products.
- K. **Ventilation.** "Ventilation" means a process of supplying and removing air by mechanical means.

3. Smoking prohibited in public places

- A. **Prohibition.** Smoking is prohibited in all enclosed areas of public places and all rest rooms made available to the public. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present.
- B. **Limitations.** The prohibition in subsection 3(A) of these Rules is subject to the following limitations. Nothing in these Rules prohibits smoking where allowed under this subsection.
- 1) Smoking is not prohibited in an enclosed area of a public place during a period of time that the facility containing the enclosed area of the public place is not open to the public. During its normal business hours, a public place must be closed for at least one hour to be considered "not open to the public."

- 2) Smoking is not prohibited in theaters or other enclosed structures used for plays, lectures, recitals or other similar purposes if the smoking is solely by a performer and the smoking is part of the performance.
- 3) Smoking is not prohibited in any area where undertaken as part of a religious ceremony or as part of a cultural activity by a defined group.
- 4) Smoking in places of employment is governed by the provisions of 22 M.R.S.A. §1580-A. If public employees' rights provided in collective bargaining agreements are affected by this section, the employees have the right to reopen negotiations for the purpose of bargaining for smoking areas in nonpublic areas of publicly owned buildings.
- 5) Smoking in hospitals is governed by the provisions of 22 M.R.S.A. §1580-B.
- 6) Smoking is not prohibited in motel or hotel rooms that are rented to members of the public.
- 7) Smoking is not prohibited in a private residence unless the private residence is used as a day care or baby-sitting service. If a private residence is used as a day care or baby-sitting service, smoking is prohibited:
 - a. In the residence, during the hours of operation as a day care or babysitting service;
 - b. In outdoor areas on the property of that private residence, wherever a child under care may be present; and
 - c. During the facility's hours of operation, in a motor vehicle owned or operated by the facility whenever a child under care is in the vehicle.
- 8) Smoking is not prohibited in public places when high-stakes beano or bingo games are being conducted in accordance with the provisions of 17 M.R.S.A. §314-A.
- 9) Smoking is not prohibited in a tobacco specialty store.
- 10) Smoking is not prohibited in designated smoking areas in an off-track betting facility or simulcast racing facility at a commercial track, if that facility is licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003, is purchased from the owner or purchaser of a facility licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003 or is moved to another location within the same municipality by the owner or purchaser of a facility licensed pursuant to Title 8, chapter 11 and in operation on June 30, 2003, and as long as:
 - a. No sales or services are provided in the designated smoking area, except that television equipment and stand-alone betting terminals or other means of placing wagers may be provided;

- b. No employees work in or are required to pass through the designated smoking area;
- c. Members of the public, except for those who choose to be present in the designated smoking area, are not required to utilize or pass through the designated smoking area for any purpose;
- d. No one under 18 years of age is permitted in the designated smoking area;
- e. The designated smoking area within the purchased or relocated off-track betting facility or purchased or relocated simulcast racing facility has a floor area no larger than 2,000 square feet, except that any designated smoking area larger than 2,000 square feet and in existence on January 1, 2005 is exempt from this subparagraph;
- f. No slot machines are located within the off-track betting or simulcast racing facility. For the purposes of this subparagraph, an off-track betting facility or a simulcast racing facility must be in a separately enclosed area, whether stand-alone or within another facility, that is accessible by either an interior or exterior door; and
- g. The designated smoking area is located entirely within a separately enclosed area of an off-track betting facility or simulcast racing facility and proper signs are mounted to the exterior of the designated smoking area indicating that use of that area is for off-track betting and simulcast racing patrons only.

C. Requirements and Guidelines for Smoking Indoors and Outdoors

1) Smoking outdoors

Except as otherwise provided in 3(A) and (B) above, the owners or operators of a public place may designate an area outdoors for smoking, provided it is not in a location that will allow circulation of environmental tobacco smoke into the enclosed areas of a public place in any way, e.g., through the ventilation system, open windows, and open doors. An area for smoking outdoors may be constructed to protect patrons from the weather as long as it is not an "enclosed area" within the meaning of Section 2(C) of these Rules.

2) Smoking indoors

Smoking may be permitted indoors only in a designated smoking area and only if the public place which it serves is an off-track betting facility or a simulcast racing facility at a commercial track and it meets the following requirements:

- a. The designated smoking area must be clearly marked and designed to prevent smoke from reaching any enclosed area of a public place where smoking is prohibited.

- b. The designated smoking area shall be located in a room that is not a common area; has floor-to-ceiling structural partitions such that the ceiling and walls are permanently attached to one another; has a door that is kept closed at all times except for ingress or egress; meets the standards and conditions of the Life Safety Code, as adopted by the State Fire Marshal pursuant to 25 M.R.S.A. §2542, and meets the ventilation requirements in subsection 3(C)(6).
- c. A sign must be posted in the designated smoking area stating the maximum occupancy. The sign must contain at least 3" letters and numbers (e.g., Maximum Occupancy: 6).
- d. The door to the designated smoking area must be kept closed at all times except for ingress or egress; this may be accomplished with the installation of an automatic door closer, airlock, other device or mechanism that prevents circulation of environmental tobacco smoke, or a combination thereof.
- e. There must be an exhaust mechanism for the ventilation of the designated smoking area which consists of local, mechanical exhaust with direct discharge to the outdoors, in such a manner as not to create objectionable odors or a nuisance on the adjacent premises, and the volume and velocity of exhaust air must be a minimum of ten (10) percent greater than the volume and velocity of supply air in order to maintain a negative air pressure of at least three hundredths (0.03) of an inch of water column within the smoking area. A manometer with a minimum measurement sensitivity of 0.001 inch of water column (or 0.1 Pascal) shall be used to measure differential pressure.

The air exchange requirements for ventilation of a designated smoking area shall be a minimum of 60 cubic feet per minute (cfm) per person based on maximum occupancy of seven (7) individuals per one hundred (100) square feet of floor space. This air exchange shall be supplied by transfer air.

4. Posting signs

Signs must be posted conspicuously in buildings where smoking is regulated. Designated smoking areas must have signs that read "Smoking Permitted" with letters at least one inch in height. Places where smoking is prohibited must have signs that read "No Smoking" with letters at least one inch in height or the international symbol for no smoking

5. Retaliation Prohibited

It is unlawful for any person to discharge, refuse to hire, discipline or otherwise retaliate against any person who pursues any remedy available to enforce the requirements of 22 M.R.S.A. §1541 *et seq.* or these Rules.

6. Tobacco specialty store; entry prohibited for persons under 18 years of age

A person under 18 years of age is prohibited from entering a business licensed as a tobacco specialty store unless accompanied by a parent or legal guardian, regardless of whether smoking is allowed in that store.

7. Enforcement and Violations

- A. Any violation of 22 M.R.S.A. §§ 1541-1547 or these Rules is a civil violation for which a fine of \$100 may be adjudged, except that a fine of up to \$1,500 may be adjudged for each violation in cases when a person engages in a pattern of conduct that demonstrates a lack of good faith in complying with 22 M.R.S.A. §§ 1541-1547 or these Rules. Each day any person is found smoking in a public place, or the owner fails to post or supervise the implementation of a smoke-free public place, shall constitute a separate offense.
- B. Citations for violations of 22 M.R.S.A. §§ 1541-1547 or these Rules shall be processed in accordance with Rule 80H of the Maine Rules of Civil Procedure. In accordance with that rule, citations shall be filled out and served upon any person who has allegedly violated 22 M.R.S.A. §§ 1541-1547 or these Rules, by either a representative of the Maine Center for Disease Control and Prevention and any other officer also authorized to enforce said statute or Rules.
- C. Enforcement actions for violations may be brought against any person smoking in a public place, the owner of a public place, or both.
- D. The Attorney General may bring an action to enforce 22 M.R.S.A. §§ 1541-1547 or these Rules in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of 22 M.R.S.A. §§ 1541-1547 or these Rules by a person or any person controlling such person.

8. Severability

Should any provision of these Rules be determined to be unconstitutional or unenforceable, such a determination shall not invalidate any other provision of these Rules.

STATUTORY AUTHORITY: 22 M.R.S.A. §§ 3, 42, 1541-1547; Pub. L. 2005, Ch. 257

EFFECTIVE DATE:

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