

STATE OF MAINE
SMOKING IN PUBLIC PLACES RULE

10-144

CODE OF MAINE RULES

CHAPTER 249



Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
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Chapter 249 Smoking in Public Places Rule

SUMMARY:

The Maine Center for Disease Control and Prevention has been authorized pursuant to 22 M.R.S. §§ 42, 1580-A and 1580-E, to enforce provisions of 22 M.R.S. Chapter 262, regarding smoking in public places. This Rule is intended to clarify the requirements for compliance with this law.

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SECTION 1. DEFINITIONS

As used in this Rule, unless the context indicates otherwise, the following terms and phrases have the following meanings:

- A. Designated smoking area** means an outdoor area where smoking is permitted, which must be at least 20 feet from windows, entryways, vents, doorways or other openings and must be designed to prevent smoke escaping from the designated smoking area into an enclosed area of a workplace or public place or other areas where smoking is prohibited.
- B. Dining and beverage service** means wait or self service of food or beverages.
- C. Eating establishment** has the same meaning as defined in 22 M.R.S. §2491, Sub-§7.
- D. Electronic smoking device** means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.
- E. 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.
- F. 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.
- G. Outdoor eating area** means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment, as defined in 22 M.R.S. §2491, Sub-§ 7, as long as food or drink is served by the eating establishment to the public for consumption on the premises.
- H. 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. §1542(2)(J) and §3(B)(7) of this Rule, a private residence is not a public place.
- I. Residential facility** means a facility with one or more residential units or apartments that is licensed by the Department of Health and Human Services.
- J. Secondhand smoke** is tobacco or plant product smoke, whether natural or synthetic, given off by the burning end of a cigarette, pipe or cigar, a mixture of smoke from a combination of these sources, exhaled vapor or aerosol from use of an electronic smoking device, and smoke that is exhaled by a smoker.
- K. Smoking** includes carrying or having in one's possession a lighted or heated cigarette, cigar, or pipe or a lighted or heated tobacco or plant product intended for human

consumption through inhalation, whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

- L. **State historic site** has the same meaning as "historic site" in 12 M.R.S. §1801, Sub-§ 5.
- N. **State park** has the same meaning as "park" in 12 M.R.S. §1801, Sub-§ 7.
- O. **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.
- O. **Ventilation** means a process of supplying and removing air by mechanical means. Ventilation technologies do not sufficiently protect individuals from the harmful effects of breathing secondhand smoke.

SECTION 2. SMOKING PROHIBITIONS AND LIMITATIONS

A. Prohibitions for Public Places

- 1. Smoking is prohibited in all enclosed areas of public places and all rest rooms made available to the public.
- 2. In the case of a child care facility that is not home-based, smoking is 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.
- 3. Smoking is prohibited in outdoor areas of a child care facility where children may be present.
- 4. Smoking is prohibited in outdoor eating areas open and available for dining and beverage service
- 5. Smoking is prohibited in, on, or within, 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.

B. Prohibitions for Private Residences Under Certain Circumstances

- 1. Smoking is prohibited in a private residence, when the private residence:
 - a. is used by a family child care provider or a person operating a baby-sitting service. If a private residence is used by a family child care provider or a person operating a baby-sitting service, smoking is prohibited:
 - i. in the residence, one hour prior to its opening and during the hours of operation by a family child care provider or a person operating a babysitting service;
 - ii. in outdoor areas on the property of that private residence, wherever a child under care may be present; and

- iii. during the facility's hours of operation, and for one hour before the family child care is open to public, in a motor vehicle owned or operated by the family child care provider.
 - b. is a unit or apartment in a residential facility, when, during the period of time that an employee is physically present to perform work there, smoking is prohibited.
 - c. is a personal residence, when, during the period of time that an employee is physically present to perform work there, smoking is prohibited.
2. Otherwise, smoking in a private or personal residence is not prohibited by public health statutes but is controlled by the owner or operator of that residence.

C. Limitations. The prohibitions in Sub-§§3(A) and (B) of this Rules are subject to the following limitations. Nothing in this Rule prohibits smoking where allowed under this sub-section.

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. §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 designated smoking areas.
5. Smoking is not prohibited in lodging place rooms, such as motel or hotel rooms expressly used for sleeping accommodations for the public. The definition of "Lodging place" is located at 22 M.R.S. §2491 (7-F).
6. 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. §314-A.
7. Smoking is not prohibited in a tobacco specialty store. The on-premises service, preparation or consumption of food or drink, is prohibited, if the tobacco specialty store was not licensed for such service, preparation or consumption prior to January 1, 2007. Smoking a waterpipe or hookah is prohibited in a tobacco specialty store that is newly licensed or that requires a new license after January 1, 2007.
8. 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, M.R.S., Chapter 11 meets the requirements of 22 M.R.S. §1542(2)(N), and as long as:

- a. The designated smoking area is clearly marked and designed to prevent smoke from reaching any public place where smoking is prohibited.
 - b. The designated smoking area is 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.
 - c. The door to the designated smoking area is 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 secondhand smoke, or a combination thereof.
 - d. An exhaust mechanism exists 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 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.
9. Smoking is not prohibited in a “qualifying club,” so long as it meets the definition and all the requirements of 22 M.R.S. sub-§§1580-A(2)(C-2) and 1580-A(9) and 10-144 CMR Chapter 250, and so is 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 the club. Note: A club holding a public function is considered open to the public and subject to this rule during such times.

D. Requirements and Guidelines for Outdoor Smoking Areas

Except as otherwise provided in this section 2, the owners or operators of a public place may designate an area outdoors for patrons’ smoking, provided it is a minimum of 20 feet from any windows, entryways, doorways, vents or other openings or any outdoor area where smoking is prohibited by law, and not in a location that will allow circulation of secondhand smoke into the enclosed areas of a business facility or 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 1 of this rule.

SECTION 3. POSTING SIGNS, NOTIFICATIONS

- A. Signs must be posted conspicuously in buildings and outdoors 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.

- B. Notification; request for compliance. An eating establishment with an outdoor eating area shall post signs in accordance with 22 M.R.S. §1543, notify its patrons of the prohibition on smoking in outdoor eating areas and request that all persons within an outdoor eating area comply with this section.

SECTION 4. 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. §§ 1541 - 1548 or this Rule. It is also unlawful to retaliate against any person who pursues any remedy against smoking in an outdoor area of an eating establishment.

SECTION 5. 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.

SECTION 6. ENFORCEMENT AND VIOLATIONS

- A. Any violation of 22 M.R.S. §§ 1541-1547 and/or this Rule is a civil violation. 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. For the purposes of this rule, the following fine amounts may be assessed for the following violations:
1. First Violation: \$100.00
 2. Second Violation/Offense: \$250.00
 3. Third Violation/Offense: The person violating this rule for the third time, or any subsequent time thereafter, may incur a fine of \$500 for each subsequent violation.
- B. Citations for violations of 22 M.R.S. §§ 1541-1547 or this Rule 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. §§ 1541-1547 or this Rule, by either a representative of the Maine Center for Disease Control and Prevention and any other officer also authorized to enforce said statute or Rule.
- 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. §§ 1541-1547 or this Rule 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. §§ 1541-1547 or this Rule by a person or any person controlling such person.

SECTION 7. SEVERABILITY

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

STATUTORY AUTHORITY: 22 M.R.S. §§ 42, 1541-1547, 1580-A and 1580-E; Pub. L.1 2005, Ch. 257

EFFECTIVE DATE:

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July 1, 2010 - filing 2010-190, routine technical language
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