

# **Regulations of the Wenham Board of Health**

## **Sale of Tobacco Products to Minors**

### **Section 1. Declaration of Findings & Policy:**

Access by minors to tobacco products is a major public health problem. In the interest of public health, it is the policy of the Wenham Board of Health to discourage minors from experimenting with tobacco and to make tobacco products less accessible to minors.

### **Section 2: Authority:**

This regulation is promulgated under the authority granted to the Wenham Board of Health under the Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

### **Section 3: Definitions:**

For the purpose of this regulation, the following words shall have the meanings respectively ascribed to them by this section:

Self Service Display: Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Minor: Any individual who is under the age of twenty-one (21).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

Vending Machine: Any automated or mechanical, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

**Section 4: Sales to Minors Prohibited:**

1. No person shall sell tobacco products or give tobacco products to a minor.
2. No person shall sell or permit the sale of tobacco products unless the location at which the tobacco products are available for purchase is posted with a notice which is clearly visible to anyone purchasing such products. See M.G.L. Ch. 270, Sect. 6." Said notice shall be that notice provided by the Massachusetts Department of Public Health and available from the Wenham Board of Health.
3. Identification: Each retailer shall verify, by means of photographic identification containing the bearer's date of birth (including but not limited to government identification), that no person purchasing the product is younger than twenty-one (21) years of age. No such verification is required for any person over the age of 26.

**Section 5: Tobacco Sales Permit:**

1. No person shall sell or otherwise distribute tobacco within the town of Wenham without first obtaining a tobacco sales permit issued by the Wenham Board of Health.
2. As part of the application process, the applicant will be provided with instructions on compliance with M.G.L. Ch. 270 Section 6 (sales of tobacco to minors and penalties for violation thereof) and compliance with the Wenham Board of Health.
3. Each applicant is required to sign a statement declaring that the applicant has read said instructions and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding the law.
4. The annual fee for a tobacco sales permit shall be \$25.00 or as determined by the Wenham Board of Health. All such permits shall be renewed annually. Expiration of the permit will be 12 months from the issued date.
5. A separate permit is needed for each location.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.

**Section 6: Free Distribution:**

No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes or any agent or employee of such person, shall distribute a cigarette or other tobacco or smoking product free to any person.

**Section 7: Packaging:**

No manufacturer, distributor or retailer may sell or cause to be sold, or distribute or cause to be distributed any cigarette package that contains less than a full package as intended by the manufacturer.

**Section 8: Self Service Displays:**

All self-service displays of tobacco products are prohibited. The only exception is self-service displays that are located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.

**Section 9: Tobacco Products Vending Machines:**

No person shall distribute or sell tobacco products by the use of a vending machine unless the vending machine is located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present or permitted to enter at any time.

**Section 10: Violations and Penalties:**

1. Any person who violates the provisions of this regulation shall be given one warning. Upon subsequent violations, the permit holder shall be subject to a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200) for the second offense and three hundred dollars (\$300) for the third and each subsequent offense within a twenty-four month period.
2. The Wenham Board of Health may suspend a tobacco sales permit granted pursuant to this regulation upon determination that a permit holder has committed three (3) violations of this regulation within twenty-four months, calculated from the date of the first offense. The Wenham Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. The Wenham Board of Health after a hearing, may suspend the tobacco sales permit.
3. Any permit holder who does not have an appeal pending and does not pay an imposed fine within twenty-one days may be subject to the suspension of the tobacco sales permit granted pursuant to this regulation. The Wenham Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than fourteen (14) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision, and the reasons therefor, in writing. The Wenham Board of Health, after a hearing, may suspend the tobacco sales permit until the fine is paid, All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

**Section 11: Enforcement:**

As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in the manner provided in M. G.L. Chap. 40, Sect. 21D by the Wenham Board of Health or their designee. Any fines imposed under the provisions of this regulation shall ensure to the Wenham Board of Health.

**Section 12: Severability:**

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining section being in force.

**Section 13: Adoption and Effect:**

These rules and regulations were adopted by unanimous vote of the Board of Health, Town of Wenham, Massachusetts and are to be in full force and effect on and after December 30, 2018 and shall, before said effective date, be published in a newspaper published in this town and a copy shall be deposited in the office of the Town Clerk.

Public Hearing Date: December 13, 2018


Adopted: December 13, 2018

Copy sent to DEP: December 20, 2018

Chairman: \_\_\_\_\_

  
Dr. Andrew Ting

  
Gerald Donnellan

  
Regina Baker