

Regulation of the Danvers Board of Health Sale of Tobacco Products to Minors

SECTION I - Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than ninety percent (90%) of all smokers begin smoking before the age of eighteen (18) (See, "Preventing Tobacco Use Among Young People," Surgeon General's Report, 1994); and whereas an estimated three thousand (3,000) minors begin smoking every day in the United States (See, "Cancer Facts & Figures - 1993," American Cancer Society); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Danvers Board of Health to curtail the access of tobacco products by minors.

SECTION II - Authority:

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

SECTION III - Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

- (a.) **Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.
- (b.) **Employee:** Any individual who performs services for an employer.
- (c.) **Employer:** Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Town of Danvers or any agency thereof, which uses the services of one (1) or more employees.
- (d.) **Minor:** Any individual who is under the age of eighteen (18).
- (e.) **Permit Holder:** An owner or operator of any establishment engaged in the sale of tobacco products that applies for and receives a tobacco sales permit, or his or her agent.
- (f.) **Person:** An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.
- (g.) **Self Service Display:** Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.
- (h.) **Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its form.

(i.) **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.

SECTION IV - Tobacco Sales to Minors Prohibited:

(a.) No person shall sell tobacco products or permit tobacco products to be sold to a minor, or not being the minor's parent or legal guardian, give tobacco products to a minor.

(b.) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Danvers Board of Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of tobacco product sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. For all other cash registers that sell tobacco products, a notice shall be attached which is no smaller than nine (9) square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than four (4) feet or more than nine (9) feet from the floor.

(c.) Identification: Each person shall verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

(d.) All retail sales of tobacco must be face-to-face between the seller and the buyer.

SECTION V - Tobacco Sales Permit:

1. After January 1, 1995, no person shall sell or otherwise distribute tobacco at retail within the town of Danvers without first obtaining a tobacco sales permit issued annually by the Danvers Board of Health.

2. As part of the application process, the applicant will be provided with the Danvers Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.

3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

4. The Danvers Board of Health shall determine the fee for a tobacco sales permit. All such permits shall be renewed annually by January 1.

5. A separate permit is needed for each retail establishment selling tobacco.
6. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
7. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
8. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
9. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

SECTION VI - Free Distribution:

There shall be no free distribution of any cigarettes or tobacco products within the Town of Danvers unless such product is part of a promotional campaign that rewards a legal purchase with a free sample. Redemption of coupons distributed in newspapers, or other periodicals or affixed to packaging for products shall be allowed provided the purchase is made by those at least eighteen (18) years old.

SECTION VII - Out-of-Package Sales:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

SECTION VIII - Self Service Displays:

All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

SECTION IX - Tobacco Vending Machines:

All tobacco vending machines are prohibited.

SECTION X - Violations:

1. It shall be the responsibility of the permit holder and/or his or her agent(s) to ensure compliance with all sections of this regulation pertaining to his/her place of business or any person in violation of any section of this regulation. The violator shall receive:

- ◆ In the case of a first violation, a fine of one hundred dollars (**\$100.00**).
- ◆ In the case of a second violation within 12 months of the date of the first violation, a fine of two hundred dollars (**\$200.00**).
- ◆ In the case of three or more violations within 12 months of the date of the current violation, a fine of three hundred dollars (**\$300.00**) and the permit shall be suspended for seven (7) consecutive business days.
- ◆ A fourth violation within a twelve-month period shall result in a loss of license to sell tobacco products for a period of six (6) months.

2. The Danvers Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefore 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 Danvers Board of Health after a hearing may suspend the tobacco sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

3. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

SECTION XI - Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

SECTION XII - Enforcement:

Enforcement of this regulation shall be by the Board of Health of the Town of Danvers or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of the Town of Danvers or its designated agent(s) and the Board shall investigate.

SECTION XIII - Severability:

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION XIV - Effective Date:

This regulation shall take effect on April 1, 2002.