



**TOWN OF WALPOLE
BOARD OF HEALTH
REGULATIONS FOR THE SALE OF TOBACCO TO MINORS
Statement of Issue: Youth Access**

Of the Massachusetts children alive today (persons under the age of 20), based on current smoking rates, more than 100,000 will be killed prematurely by tobacco use.

The earlier children begin to use tobacco, the more likely they are to become heavy smokers, have a harder time quitting, and die of tobacco related illness. Young smokers underestimate the harmful effects of tobacco use and do not recognize the process that quickly leads them to addiction.

The Walpole Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products.

Accordingly, the Walpole Board of Health is implementing a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

Definitions:

The following words and phrases, whenever used in this regulation, shall be construed as defined in this section:

- A. **“Board”** means the Board of Health of the Town of Walpole.
- B. **“Lockout Device”** means an electrical device hard wired to a vending machine. the device must be activated by an employee.
- C. **“Persons” means an individual, partnership, corporation, business, firm, association or group including a city, town, county, or other governmental unit.**
- D. **“Restaurant” means** any establishment including but not limited to include cafeterias, cafeterias in the designated workplace, night clubs, banquet halls or other function rooms, having one or more seats, serving food for consumption on the premises to include outdoor seating, as well as kitchen in which food is prepared on the premises for serving elsewhere, including catering facilities. A restaurant is an establishment that derives 20% for more of its total revenues from the sale of food per year.
- E. **“Self Service Display” means displays of tobacco products from which individual packages, multi-packs, or cartons of tobacco products may be selected by the customer.**
- F. **“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.

- G. Tobacco Vending Machine”** means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade check, bills, swipe cards or slugs.
- H. “Town”** means the Town of Walpole.

Section 1001: Sale to Minors:

In conformance with Massachusetts General Laws Chapter 270, Section 6, cigarettes, chewing tobacco, snuff or any tobacco in any of its forms shall not be sold to any person under the age of eighteen (18) or, not being his parent or guardian, shall not give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen (18).

No person shall sell cigarettes or other tobacco products to a person under eighteen (18) years of age who has a note from an adult requesting such sale.

Section 1002: Posting State Law:

In conformance with Massachusetts General State Laws, Chapter 270, Section 7, a copy of Massachusetts State 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 to be posted shall be that notice provided by the Massachusetts Department of Public Health.

Such notice shall be at least 48 square inches and shall be posted at the cash register, which receives the greatest volume of cigarette package 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 customer and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. For all other cash registers that sell cigarettes, a notice shall be attached that is not smaller than 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 is 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 4 feet or more than 9 feet from the floor.

Section 1003: Identification Required:

No retailer shall sell or permit to be sold cigarettes or other tobacco products to an individual without requesting and examining identification establishing the purchaser’s age as eighteen years or greater unless the seller has some other conclusive basis for determining the buyer’s age is 18 years or greater.

Each retailer shall verify by means of photographic identification containing the bearer’s date of birth that no such person purchasing the product is younger than 18 years of age. No such verification is required for any person twenty-seven-- (27) years or older.

The establishment’s owners and/or managers are responsible for all of his or her employees’ training and enforcement of these regulations.

Section 1004: Registration Required:

It is unlawful for a retailer to sell cigarettes or other tobacco products unless that retailer holds and maintains a valid registration from the Town of Walpole for each location in which tobacco products are sold. The term of the registration shall be one year, renewed on January 1, if the applicant complies with the provisions of this chapter. Such registration shall be renewed annually at the current Board of Health fee schedule.

A tobacco retail registration is non-transferable. A new registration will be issued to a tobacco retailer who changes locations.

Sales of tobacco are not allowed in Restaurants as defined in this regulation.

Section 1005: Vending Machines and Self Service Displays:

A person may not sell tobacco products via vending machines and self-service displays.

Section 1006: Out-of-Package Sales Prohibited:

It is unlawful to sell cigarettes out of the manufacturer's package, which complies with required health warnings. Sale of distribution of tobacco products in any form other than an original factory-wrapped package is prohibited. No person may sell or cause to be sold any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

Section 1007: Distribution of Tobacco Products; Coupons:

No person, firm, corporation, establishment, or agency shall distribute tobacco products free of charge within the town of Walpole. Such methods of free distribution include, but are not limited to, tobacco products "giveaways," or free distribution of tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance. Such restriction shall not apply to use of coupons or manufacturers incentives from magazines, newspapers, periodicals, or attached to packaging.

Section 1008: Sales by Persons Under Age 18:

No person or entity selling tobacco products shall allow anyone under eighteen (18) years of age to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and state laws regarding the sale of tobacco and signs a sworn statement that (s) he understands and will uphold the regulations. A copy of the sworn statement will be placed on file in the office of the Board of Health.

Section 1009: Possession:

No minor may be in possession of tobacco products on school property or within five hundred feet of school property within the Town of Walpole.

Section 1010: Enforcement:

Enforcement of these regulations shall be by the Board of Health members, Board of Health agents and Walpole Police.

Section 1011. Penalties:

The penalties for the following:

1. Tobacco retailers not posting the Massachusetts Department of Public Health warning sign
2. Tobacco Retailers not possessing a valid tobacco registration from the Walpole Health Department
3. The improper placement and/cooperation of a vending machine
4. Out of package sales of tobacco products
5. Use of a free standing display
6. Improper placement of a self-service display
7. Improper distribution of tobacco products / coupons in the Town of Walpole
8. Failure to have minor employees sign an affidavit that they have read and understand the tobacco regulations

Are a fine of fifty (\$50) dollars for each violation or day of noncompliance

and/or

Suspension of any license issued by the Board of Health for that place for a period of up to two days for each violation.

The penalties for sales of tobacco products to minors which shall be levied on the storeowner, who shall appear before the Board of Health with a written prevention action plan to ensure that tobacco products will not be sold to minors.

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| 1. | First Offense | \$200 fine and suspension of selling tobacco products for two (2) days |
| 2. | Second Offense during a three (3) year period | \$300 fine and suspension of selling tobacco products for four (4) days |
| 3. | Third Offense during a three (3) year period | \$300 fine and suspension of selling tobacco products for seven (7) days |
| 4. | Subsequent offenses during a three (3) year period | \$300 fine and further penalties to be determined at a hearing of the Board of Health |

The suspension dates for selling cigarettes will be at the discretion of the Board of Health and are not necessarily consecutive. The store shall post an appropriate sign visible to customers that tobacco sales have been suspended per order of the Board of Health.

Notwithstanding any specific penalties listed above the Board of Health at all times may consider the revocation of the registration to sell tobacco after a hearing and opportunity to be heard. All penalties shall be applied to the holder of the retail tobacco registration, where such registration exists, or to the person violating any regulation, where a retail tobacco registration is not required.

The penalties for possession of tobacco products for a minor on school property or within 500 feet.

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| 1. | First Offense | \$100 |
| 2. | Second Offense | \$200 |
| 3. | Third and subsequent offenses | \$300 |

In addition to other remedies available under any other law, this regulation, any conditions under which a registration issued, or any decision rendered by the Walpole Board of Health may be enforced by and at the discretion of General Laws, Chapter 40, Section 21D, which provides for non-criminal disposition of such offenses.

Section 1012: Severability:

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.

Section 1013: Effective Date:

This regulation shall be effective on April 1, 2005

Amended November 1, 2005

Amended February 26, 2007

Amended March 22, 2011