

**Town of Dartmouth Board of Health
Tobacco Control Regulation Affecting
"Youth Access to Tobacco Products"**

Section I. STATEMENT OF PURPOSE

Whereas, conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and

Whereas, more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and

Whereas, nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); 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 youths, access by youths to tobacco products is a major problem; and

Now therefore, it is the intention of the Town of Dartmouth Board of Health to curtail the access of tobacco products by youths.

SECTION II - AUTHORITY

This Town of Dartmouth Regulation Affecting Youth Access to Tobacco Products, hereinafter "**Tobacco Control Regulation**" is promulgated pursuant to the authority granted to the Town of Dartmouth Board of Health by Massachusetts General Laws Chapter 111, Section 31 "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:

"Adult only" Establishments: Establishments in which the owner or business agent ensures that no person younger than eighteen years of age is present or permitted to enter at anytime. Establishments must post signs prohibiting entry by anyone under the age of twenty one (21) at anytime.

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.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Dartmouth and any agency thereof, which uses the services of one (1) or more employees.

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who is eligible to apply for and receive a tobacco sales permit being the legal owner or a designated officer of the Association, Corporation, Partnership, or Legal Entity for the business establishment as registered with the Massachusetts Secretary of State, or any person who is required to apply for a tobacco sales permit pursuant to these

regulations.

Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

Self-Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Tobacco Product: Cigarettes, cigars, cigarillos, chewing tobacco, loose tobacco, pipe tobacco, bidis, blunts, blunt cigar wrappers, — snuff, little cigars or tobacco in any of its forms.

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.

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

SECTION IV - SALE AND/OR DISTRIBUTION OF TOBACCO PRODUCTS

A. Tobacco Sales Permit

1. No person shall sell or otherwise distribute tobacco products at retail within the Town of Dartmouth without first obtaining a valid tobacco sales permit issued annually by the Dartmouth Board of Health. Only owners of establishments with a **permanent, non-mobile location** are eligible to apply for a permit and sell tobacco products in the Town of Dartmouth.

2. As part of the tobacco sales permit application process, the applicant will be provided with the Dartmouth 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 Cigarette Retailer's License, **if applicable**, latest Cigar Form-1 filed with the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

4. The fee for a tobacco sales permit shall be determined by the Dartmouth Board of Health annually and set forth in the Board of Health's Fee Schedule for Licenses, Permits and Services. All such permits shall be renewed annually by December 31st. Applications for renewal must be submitted at least thirty (30) days prior to the expiration date or a late filing fee shall apply.

5. A separate permit is required for each retail establishment selling tobacco products.

6. Each "true original" 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 from a person or a location. A new owner of an establishment that sells tobacco must apply for a new tobacco sales permit.

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.

10. A tobacco sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

(a) The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the tax collector, shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

(b) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of the law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of the issuance of said certificate.

(c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said license agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

(d) The board of selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-

eight A in the business or activity conducted in or on said property.

B. Tobacco Vending Machines

1. No person, firm, corporation or other entity shall install or maintain a vending machine to distribute or sell tobacco products in the Town of Dartmouth. The only exception is in facilities permitted to sell tobacco products prior to the effective date of this regulation via vending machine and where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

2. When allowed by Section IV (B), Paragraph (1), the vending machine shall be located in the establishment in the immediate vicinity and in plain view and control of a responsible employee, so that all purchases are observable and controllable. In accordance with and in addition to M.G.L. C. 138 § 12, and provided each vending machine is equipped with a lock-out device, such machines may only be located in an establishment with a valid liquor pouring license to serve alcoholic beverages for consumption on the premises. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.

3. Effective January 1, 2010, all tobacco vending machines are prohibited.

C. Packaging/ Distribution

1. No person shall distribute or cause to be distributed, any free samples of cigarettes or tobacco products in the Town of Dartmouth. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals or attached packaging.

2. It shall be unlawful to remove and commercially sell single cigarettes or single cigars or other tobacco products from the original manufacturer's package intended for resale, which package shall state the federally required health warnings. Commercial sale and/or distribution of cigarettes or other tobacco products in a form other than the original factory-wrapped packaging, is prohibited.

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

D. 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.

E. Tobacco Sales To Youths Prohibited

1. No person shall sell tobacco products or permit tobacco products to be sold to a youth; or not being the youth's parent or legal guardian, give tobacco products to a youth.

2. Identification: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

3. All retail sales of tobacco must be face-to-face between the seller and the buyer. The only exception is by vending machine in accordance with Section IV. § B. of this regulation.

F. Sales by Employees

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 products and signs a statement provided by the Dartmouth Board of Health, 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. Such signed statements, must be made available for review on-site within seven (7) days of each routine inspection, during the permit holders normal business hours upon request of an agent of the Board of Health.

SECTION V - POSTING OF NOTICES

A. Vending Machines

All vending machines as permitted in accordance with Section IV. § B., shall display conspicuous signage:

1. Stating: it is illegal to sell cigarettes and other tobacco products to youths and;
2. Furnished by the Massachusetts Department of Public Health and made available by the Board of Health in accordance with M.G.L. Chapter 64, Section 10 and 940 CMR 21.04 (4), (b) 3, which states... "Persons under age 18 are prohibited from using this machine" and;
3. Notifying customers of the lock-out device and identifying the outlet employee(s) to contact to purchase tobacco from the machine pursuant to 940 CMR 21.04 (4), (b) 3.

B. Points of Entry

Notices provided by the Board of Health or its agents must be posted in a conspicuous place by the permit holder or his or her business agent in charge thereof at all accessible points of entry at each establishment or place used to sell cigarettes or tobacco products at retail. Such notice shall be at least 48 square inches, shall directly face any person entering the establishment at each point of entry, 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.

C. Cash Registers

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 Dartmouth Board of Health or its agents. The notice shall be posted conspicuously by the permit holder in the retail establishment or other place used to sell tobacco products. The notice shall be posted in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The 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.

1. Such notice shall be at least 48 square inches and shall be posted at the cash register, which receives the greatest volume of cigarette or other tobacco product sales.
2. For all other cash registers that sell tobacco products, a notice shall be posted that is no smaller than nine (9) square inches.

D. Removal of Notices

Notices provided by the Board of Health in accordance with Section V, Parts A, B and C of this regulation must not be removed from the designated posting locations on the premises of the permit holder. Any permit holder removing said signage will be in non-compliance of this regulation.

SECTION VI - PENALTIES, FINES, SUSPENSION, REVOCATION AND HEARINGS

A. Sale and/or Distribution of Tobacco Products

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section IV of this regulation pertaining to his or her distribution of tobacco products. The violator shall receive:

a. In the case of a *first* violation of Section IV, a fine of one hundred dollars (\$100.00) shall be assessed.

b. In the case of a *second* violation within 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00) shall be assessed and the tobacco sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more *violations* within a 24-month period, a fine of three hundred dollars (\$300.00) shall be assessed and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

4. The Dartmouth Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which shall contain the reasons therefore and establish a date and time for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit-holder or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons therefore in writing.

5. Revocation.

(1) The Board of Health may, after providing opportunity for a hearing, order the revocation of a permit for:

- (a) Serious or repeated violations of any of the requirements of this regulation;

- (b) Interference with the Board of Health in the performance of its duties; or
- (c) A criminal conviction of the permit holder relating to the Sale and /or Distribution of Tobacco Products.

(2) Notice of the intent to revoke a permit shall be given by the Board of Health to the permit holder in writing. The notice shall specify the reason(s) for which the permit is to be revoked and that the revocation shall be imposed at the end of the ten days following service of such notice unless a written request for hearing is filed with the Board of Health by the permit holder or his or her business agent within such ten-day period. If no request for hearing is filed within the ten-day period, the permit shall be revoked. If a written request for a hearing is filed within the ten (10) day period, a hearing shall be scheduled no earlier than seven (7) days after the date of said filing. The permit holder or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons in writing.

6. 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.

B. Posting of Notices

It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section V of this regulation pertaining to their place of business. The permit holder and/or his or her business agent, or persons involved in violation of any of the provisions of Section V may receive:

1. In the case of a violation of Section V- A, B and/or C, the permit holder shall receive a fine of twenty-five dollars (\$25.00).
2. In the case of a violation of Section V - D, the permit holder shall receive a fine of ten dollars (\$10.00).

SECTION VII - NON-CRIMINAL CIVIL DISPOSITION

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

SECTION VIII - PUBLIC EDUCATION

The Board of Health shall supply retailer education for all new applicants for Tobacco Sales Permits at the time of application for permitting. Such education may include distribution of materials to guide retailers in their compliance with this regulation.

SECTION IX - ENFORCEMENT

A. The Dartmouth Board of Health and/or its designated agent(s) shall enforce this regulation.

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

SECTION X- SEVERABILITY

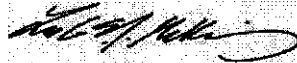
If any provision of this regulation is declared invalid or unenforceable, the other provisions shall continue in full force and effect.

SECTION XI - EFFECTIVE DATE

This regulation shall be adopted and effective upon publication in summary form in the Legal Notices Section of the Chronicle. Authorized by the Dartmouth Board of Health on 12/19/2018. Effective upon publication date 12/26/2018.



Thomas W. Hardman



Leslie E.J. McKinley

Lynne Brodeur, Chair

Date January 2, 2019

A true and exact copy

