

## CHAPTER X

### Town of Ipswich Board of Health

#### Sale & Possession of Tobacco Products and Minors

##### **A. Declaration of Findings & Policy:**

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 at least one-half of all smokers begin smoking before the age of eighteen (18); and whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and whereas nicotine in tobacco has been found by the United States Surgeon General to be a powerfully addictive drug; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and whereas a board of health regulation requiring proof of age in order to purchase tobacco products is necessary in order to restrict the access of minors to tobacco products in the interest of public health; now, therefore it is the policy of the Ipswich Board of Health to discourage minors from experimenting with tobacco and to make tobacco products less accessible to minors.

##### **B. Authority:**

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

##### **C. 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 from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

**Minor:** Any individual who is under the age of eighteen (18).

**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:** Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

**Retail Tobacco Store:** A retail store whose primary business or one of its primary businesses includes the sale of tobacco products.

#### **D. Sales to Minors Prohibited:**

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor or not being the minor's parent or guardian, 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 and which states: "Massachusetts state law prohibits the sale of tobacco products to any person under the age of eighteen (18) years of age. 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 Ipswich Board of Health.
3. 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 18 years old or older. Verification is required for any person under the age of 27.

#### **E. Possession & Purchase of Tobacco Products By Minors Prohibited:**

1. It shall be unlawful for any person under the age of eighteen (18) years to purchase tobacco products, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco products.
2. It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products provided, that the possession by a person under the age of eighteen (18) years under the direct supervision of a parent or guardian of such person in the privacy of a parent's or guardian's home shall not be prohibited.
3. It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products upon the grounds of any school building, childcare facility or other building used for education or recreation programs for persons under the age of eighteen (18) years.
4. The penalty for any person who violates the provisions of Section E of this regulation shall be as follows:

• 1 <sup>st</sup> Offense	Written Warning
• 2 <sup>nd</sup> Offense	Ten dollars (\$10.00)
• 3 <sup>rd</sup> Offense & each subsequent offense	Twenty-five dollars (\$25.00) and completion of the Smokers Cessation Program.

#### **F. Tobacco Sales Permit:**

1. No person shall sell or otherwise distribute tobacco within the town of Ipswich without first obtaining a tobacco sales permit issued by the Ipswich 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 Ipswich Board of Health Regulations.
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 both state laws and this regulation.

4. The fee for a tobacco sales permit is determined by the current Board of Health fee schedule. All such permits shall expire annually on December 31.
5. A separate permit is needed for each Retail Tobacco Store.
6. Each tobacco sales permit shall be displayed on the premises in a conspicuous place.
7. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
8. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her Retail Tobacco Store to ensure compliance with this regulation.

#### **G. Free Distribution:**

No person or entity shall knowingly distribute or furnish without charge or at less than full retail price, or cause to be furnished or distributed without charge or at less than full retail price for the purpose of commercial promotion, cigarettes or any other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public, except in retail tobacco stores.

#### **H. Out-of-Package Sales Prohibited**

It is unlawful to sell cigarettes out of the manufacturer's package, which contains the required health warnings. Sale or distribution of cigarettes in any form other than an original factory wrapped package is prohibited.

#### **I. Self-Service Displays:**

All self-service displays of tobacco products are prohibited except self-service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

#### **J. Tobacco Products Vending Machines:**

Within ninety (90) days of the effective date of this regulation, no person shall distribute or sell tobacco products by the use of a vending machine unless:

1. 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 and is located twenty (20) feet or more from any entrance or exit.
2. Or, all vending machines allowed under this section shall be equipped with a lock-out device approved by the Ipswich Board of Health. Said device shall lock out sales unless an employee who has been instructed regarding the law releases the locking mechanism. The release mechanism must not allow continuous operation of the vending machine and must not be accessible to customers. The vending machine shall be posted with a sign stating that the machine is equipped with a lock-out device and identifying the individual to contact to purchase tobacco products. The machine shall be located in the direct line of the responsible attendant.
3. All vending machines allowed under sections 1 and 2 shall display a conspicuous sign stating that it is illegal for minors to purchase tobacco products.

## **K. Violations and Penalties:**

1. Any person who violates the provisions of this regulation, except as otherwise specifically noted under Section E of this regulation, shall be subject to a fine of one hundred dollars (\$100.00) for the first offense, two hundred dollars (\$200.00) for the second offense and three hundred dollars (\$300.00) for the third and each subsequent offense within a twenty-four month period.
2. The Ipswich 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 Ipswich 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. 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 therefor in writing. The Ipswich Board of Health, after a hearing, may suspend the tobacco sales permit for a period of time not exceeding thirty (30) days. 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.
3. Any permit holder who does not have an appeal pending and who does not pay a fine within twenty-one (21) days of fine issuance may be subject to criminal proceedings or may be subject to the suspension of the tobacco sales permit granted pursuant to this regulation. The Ipswich 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. 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 Ipswich 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.
4. 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.
5. 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/her permit is suspended may be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

## **L. Non-Criminal Disposition**

As an alternative or in addition to initiating criminal proceedings, violations of this regulation may be enforced by the Health Agent through the use of non-criminal disposition in the manner provided in M.G.L. Chap.40, Sect.21D and Ipswich General By-laws Chapter XVII. Any fines imposed under the provisions of this regulation shall inure to the Town of Ipswich.

## **M. Enforcement**

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

**N. 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.

**O. Effective Date:**

This regulation shall take effect on September 1, 2003.

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Susan Hubbard, Chairman

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Carl Hiltunen, Board Member

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Spencer Amesbury, Board Member

**Hearing Notice Published:** May 15, 2003 & May 22, 2003

**Regulation Adopted:** Hearing date June 2, 2003, continued to July 7, 2003 – adopted July 7, 2003

**Regulation Published:** July 31, 2003

**Regulation Effective:** September 1, 2003

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Town Clerk