

**Regulation of the Springfield Public Health Council  
Sale of Tobacco Products**

**PUBLIC HEALTH REGULATION FOR TOBACCO PRODUCTS**

**A. STATEMENT OF PURPOSE**

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat<sup>1</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence.<sup>4</sup>

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers<sup>5</sup>;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke,<sup>6</sup>

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives<sup>7</sup>.

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them,<sup>8</sup>

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”<sup>9</sup>.

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<sup>1</sup> Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

<sup>3</sup> U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>5</sup> *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

<sup>6</sup> SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

<sup>7</sup> IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

<sup>8</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

<sup>9</sup> *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

Now, therefore it is the intention of the Springfield Public Health Council to regulate the sale of tobacco products and to regulate the minimum legal sales age for the sale of tobacco products.

## **B. AUTHORITY**

This regulation is promulgated pursuant to the authority granted to the Springfield Public Health Council and the Department of Public Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations."

## **C. DEFINITIONS**

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

**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.

**E-Cigarette:** Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**Employee:** Any individual who performs services for an employer in return for wages or profit or performs services as a volunteer.

**Employer:** Any individual, partnership, association, corporation, trust or other organized group of individuals, including the City of Springfield or any agency thereof, who or which uses the services of two or more employees.

**Individual:** Any person who patronizes an area where tobacco products are sold.

**Nicotine Delivery Product:** Any manufactured article or product made wholly or in part of tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

**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 (also known as "Freestanding Displays"):** A display from which individual packs or cartons of tobacco products may be physically selected by a customer.

**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 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.

**Vending Machines:** Any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon the insertion of coins or other forms of payment.

#### **D. TOBACCO SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE PROHIBITED**

1. In conformance with MGL c. 270, § 6, whoever sells a cigarette, or any cigarette paraphernalia, chewing tobacco, snuff, or any tobacco in any of its forms to any person under the age of 21 or, not being his parent or guardian, gives a cigarette, or any cigarette paraphernalia, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of 21 shall be punished according to the provisions of § **D** below.
2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years old or older. Verification is required for any person under the age of 27.
3. No person or entity shall sell or distribute nicotine delivery products to any person under the age of 21. Nicotine delivery products shall be subject to all sections of this regulation, except § **I** of these regulations. Violators shall be punished according to the provisions of § **D** of these regulations.

#### **E. POSTING STATE LAW; ENFORCEMENT; VIOLATIONS AND PENALTIES**

1. In conformance with MGL c. 270, § 7, a copy of MGL c. 270, § 7, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell cigarettes at retail. The Massachusetts Department of Public Health shall provide the notice to be posted and made available from the Springfield Department of Health and Human Services. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single 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 purchaser and shall not be obstructed from view and shall be placed at a height of not less than four feet or greater than nine feet from the floor. For any other cash register that sell cigarettes, a notice shall be attached which is no smaller than nine square inches, which is the size 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 and shall be placed at a height of not less than four feet or more than nine feet from the floor.
2. The Springfield Department of Health and Human Services Director designee, Environmental Health Division, the Tobacco Control Division and Police Department shall enforce this section.
3. Whoever violates this provision shall be punished by a fine of \$50. Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a of \$10.

#### **F. SELF-SERVICE DISPLAYS**

Self-service displays (also known as “Freestanding displays”) of tobacco products, from which individual packages or cartons may be physically selected by the customer, are only permitted in facilities where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time and must be within 10 feet of the regular location and in plain view of the person designated to supervise the sale of tobacco products from self-service displays.

#### **G. FREE DISTRIBUTION OR SAMPLING PROHIBITED**

No person or entity shall, in or upon any part of the streets, parks, public grounds, public buildings, or other public places within the City of Springfield, distribute free of charge any products containing tobacco for any promotion or other commercial purpose.

#### **H. LOCKOUT DEVICE REQUIRED ON VENDING MACHINES**

All tobacco vending machines are prohibited; except that tobacco vending machines are permitted if equipped with a lockout device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time. A lockout 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.

#### **I. OUT-OF-PACKAGE SALES PROHIBITED**

The sale and distribution of loose cigarettes, or in packages that contain fewer than 20 cigarettes, in any form other than an original factory-wrapped package is prohibited.

#### **J. PERMIT FOR LOCATION AND SALES OF TOBACCO REQUIRED**

1. After December 1, 1997, the Springfield Department of Health and Human Services will issue a “permit for location and sales” that will specify the names, address and approved location per the Springfield Department of Health and Human Services or its agent(s) for retailers who are required to be licensed by the state to sell tobacco products.
2. After December 1, 1997, all retailers who are required to hold a state license to sell cigarettes, and retailers who sell any other tobacco products, will also be required to hold and maintain a valid permit for location and sales from the City of Springfield for each location at which tobacco products are sold.
3. As part of the tobacco sales permit application process, the applicant will be provided with this 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.
4. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue, when required, before a tobacco sales permit can be issued.

5. After receiving the permit, the merchant will receive signage from the Springfield Department of Health and Human Services which states: "Sales of cigarettes or any tobacco products to persons under age 21 is illegal, MGL Chapter 270, Section 6 and 7." Any merchant not posting said signage will be in noncompliance with this regulation and subject to penalties per § D of this regulation. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
6. 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.
7. The term of the permit shall be one year if the licensee complies with the provisions of this regulation.
8. The fee for a one-year tobacco retailer's permit for location and sales is \$100 for each tobacco retail location.
9. A permit for location and sales is nontransferable, except a new permit will be issued to a tobacco retailer who changes locations and has shown compliance pertaining to the provisions of this regulation. A new owner of an establishment that sells tobacco must apply for a new tobacco sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder and taxes owed to the City of Springfield are satisfied in full.
10. Any person or entity selling any tobacco products without said permit shall be fined \$50 per day until the Springfield Department of Health and Human Services receives an application and payment requesting issuance of a permit.
11. After January 1, 2013, all smoking bars will be required to hold and maintain a valid smoking bar permit from the City of Springfield for each location at which tobacco products are sold. A "smoking bar," for the purposes of this regulation, shall mean an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by MGL c. 270, § 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars." The smoking bar permit replaces the permit for location and sales. The fee for a one-year smoking bar permit is \$250 for each location.
12. After January 1, 2013, all theatrical performances upon a stage or in the course of a professional film production which include smoking as part of the performance or production will be required to hold and maintain a valid performance smoking permit from the City of Springfield. The fee for a one-year performance smoking permit is \$250.

#### **K. SALES BY EMPLOYEES**

No commercial entity selling tobacco products at retail shall allow any employee to sell cigarettes or other tobacco products until such employee reads the Springfield tobacco sales ordinance 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. Any employee who sells or provides cigarettes/tobacco products to a minor shall be fined \$100.

## **L. VIOLATIONS AND PENALTIES; RESPONSIBILITIES FOR COMPLIANCE**

1. Any permit holder who fails to comply with §§ E through J, excluding §H, of this regulation shall be punished by a fine of \$100.
2. It shall be the responsibility of the permit holder in charge of the area where tobacco products are being sold to ensure compliance with all sections of this regulation pertaining to his/her place of business.
3. The permit holder in charge of the area permitted for tobacco sales involved in a violation of § D or § H of this regulation shall receive:
  - a. In the case of a first violation, the permit holder in charge of the area permitted for tobacco sales, or persons not in compliance with the provisions of this regulation, shall receive a fine of \$100. The Springfield Department of Health and Human Services shall give the permit holder notification of the ordinance, educational information and make the permit holder aware of the Springfield Department of Health and Human Services' availability to conduct workshops related to the Massachusetts state laws and the local ordinance on the illegal sales of cigarettes/tobacco products to minors. The permit holder shall also be informed of what constitutes a violation, penalties and enforcement of the ordinance.
  - b. In the case of two violations within a fifteen-month period, the permit holder in charge of the area permitted for tobacco sales or persons (other than an employee) not in compliance with the provisions of § D of this regulation shall receive a fine of \$200.
  - c. In case of three violations within a fifteen-month period, the permit holder in charge of the area permitted for tobacco sales or person (other than an employee) not in compliance with the provisions of this regulation shall receive a fine of \$300 and the tobacco sales permit shall be suspended for seven consecutive business days.
  - d. In the case of four violations within a fifteen-month, the permit holder in charge of the area permitted for tobacco sales or person (other than an employee) not in compliance with the provisions of this regulation shall receive a fine of \$300 and the tobacco sales permit shall be suspended for 30 consecutive business days.
  - e. In the case of five violations within a fifteen-month, the permit holder in charge of the area permitted for tobacco sales or person (other than an employee) not in compliance with the provisions of this regulation shall receive a fine of \$300 and the tobacco sales permit shall be revoked for the remainder of the current permit term or 12 months, whichever period is longer.
4. For any suspensions or revocation, the Springfield Department of Health and Human Services shall provide notice to the permit holder of the intent to suspend or revoke its tobacco sales permit, which date shall be no earlier than seven days after the date of said notice. The permit holder shall have an opportunity to be heard at a hearing. Such hearing shall be held before the Environmental Subcommittee of the City of Springfield Public Health Council. If, after a hearing, the permit holder is found in violation, and the permit to sell tobacco is revoked or suspended by the Subcommittee, all tobacco products shall be removed from the premises for the duration of the revocation or suspension. Permit holders must reapply for a new permit each year.

5. As an alternative to initiating criminal proceedings, violations of this regulation may be enforced in the manner provided in MGL c. 40, § 21D.
6. Each day any violation exists shall be deemed to be a separate offense.
7. The Police Department and Health and Human Services officers shall enforce this regulation. Any citizen who desires to register a complaint pursuant to this regulation may do so by contacting the Springfield Department of Health and Human Services and the Department shall investigate the complaint.
8. Any employee of the permit holder who sells or provides tobacco products to a minor in violation of this regulation shall be subject to a fine of \$100 for each occurrence.

**M. NON-CRIMINAL DISPOSITION**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D.

**N. SEPARATE VIOLATIONS**

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

**O. ENFORCEMENT**

Enforcement of this regulation shall be by the Springfield Department of Health and Human Services or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Springfield Department of Health and Human Services or its designated agent(s) and the Board shall investigate.

**P. SEVERABILITY**

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

**Q. EFFECTIVE DATE**

This regulation shall take effect on July 1, 2018.

The Springfield Board of Health enacted this regulation on November 15, 2017.

Signed by the duly representative of the Springfield Department of Health and Human Services

Helen R. Caulton Harris, Commissioner

