

TOWN OF SCITUATE
BOARD OF HEALTH

Access of Tobacco Products to Minors

The Scituate Board of Health, acting under the authority of the Massachusetts General Laws, Chapter III, Section 31, and any other applicable authority, hereby adopts the following regulations to protect the public health of the community.

Section I - Finding and Purpose

Tobacco use is a leading public health problem in the United States. There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies and irritations to the eyes, nose and throat of both the smoker and non-smoker exposed to secondhand smoke. Tobacco smoke is the third leading preventable cause of death and disease to non-smokers; over 53,000 individuals die each year as a result of chronic exposure to environmental tobacco smoke (ETS) while millions more (especially children) experience serious health problems resulting from involuntary exposure to ETS.

More than 80% of all smokers begin smoking before age eighteen and more than 3,000 people begin smoking every day in this nation. Tobacco use by minors is a continuing problem with grave public health consequences. In recognition of the Surgeon General's conclusions that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of tobacco products to minors.

Therefore, these regulations are adopted to protect the public health of the community, guarantee the right of non-smokers to breathe smoke-free air and implement a strict and enforceable system to prevent access to and the illegal sale of tobacco products to minors where legal, medical, dental, engineering, architectural or other professional and commercial services are delivered.

Section II - Definitions

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

Board of Health means the Scituate Board of Health

- Business** means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods and services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional and commercial services are delivered.
- Employee** means any individual who performs services for an employer in return for wages or profit.
- Employer** means any individual, partnership, association, corporation, trust, or other organized group of individuals, including the Town of Scituate or any agency thereof, which regularly uses the services of two (2) or more employees.
- Individual** means any employee, volunteer or any other person who patronizes an area where tobacco products are sold.
- Permit for Location And Sale** means any sole proprietorship, partnership, joint venture, corporation or other place of business including retail establishments and bars that have been given a permit by the Town of Scituate Health Department regulating the location and sale of tobacco products in the Town of Scituate.
- Restaurant** means any establishment serving food for consumption on the premises which maintains tables for the use of its customers. This includes cafeterias in the workplace.
- Retail Food Establishment** means any establishment commonly known as a supermarket or grocery store in which the primary activity is the sale of food items to the public for off-premises consumption.
- Retail Store** means any establishment selling goods or articles or personal services to the public and shall include such places as barber shops, beauty salons and tanning salons.
- Retail Tobacco Store** means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- Self-Service Display** (also known as: free standing display) means a display from which individual packets or cartons of tobacco products may be selected by a customer.

Tobacco Vending Machine means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon insertion of coins, trade checks or slips.

Section III - Tobacco Sale to Minors Prohibited

A. Permit for Location and Sales of Tobacco

- After July 1, 1996, all retailers who sell cigarettes or other tobacco products, will be required to hold and maintain a valid "Permit for Location and Sales" from the Town of Scituate Health Department for each location at which tobacco products are sold.
- All merchants permitted to sell tobacco products will post signage in accordance with M.G.L. Chapter 270, Sections 6 & 7. Any merchant failing to post said signage will be in non-compliance with this regulation and subject to the penalties stated in Section G.
- The term of this permit shall be one year on an annual basis expiring December 31st.
- The fee for a one year tobacco retailer's "Permit for Location and Sales" is ten (10) dollars for each tobacco retail location.
- A "Permit for Location and Sales" is non-transferable, except a new permit will be issued to a tobacco retailer who changes location and has shown compliance pertaining to the provisions of this regulation.

B. Vending Machines

Tobacco vending machines are prohibited in the Town of Scituate.

C. Out-of-Package Sales Prohibited

Commercial sale and/or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited.

D. Free Distribution/Free Samples Prohibited

All commercial distribution of tobacco products without charge is prohibited in the Town of Scituate.

E. Self-Service Displays

Self-service displays (also known as freestanding displays) of all tobacco products, from which any tobacco product may be selected shall be prohibited in the Town of Scituate.

F. Sales by Employees

No commercial entity selling tobacco products shall allow any employee to sell cigarettes or other tobacco products until such employee reads the Scituate Health Department's regulations and state laws regarding the sale of tobacco and signs a sworn statement, a copy of which will be placed on file in the office of the employer, that he/she understands and will uphold the regulations. A copy of all statements will be made available on site to Scituate Board of Health agent(s) upon request. Employees are also subject to fine for non-compliance.

G. Penalties, Fines, Suspension and/or Revocation of Permit

Violations of this regulation and penalties listed may be subject to the non-criminal disposition statute, M.G.L. Chapter 40, Section 21D.

It shall be the responsibility of the permit holder and/or individual in charge of the area where tobacco products are being sold to ensure compliance with all sections of this regulation pertaining to their place of business. The permit holder and/or individual charge of the area permitted to tobacco sales, or persons involved in violation of any of the provisions of this regulation will receive:

- In the case of a first violation, the permit holder and/or individual in charge of the area permitted for tobacco sales, or person not in compliance with the provisions of this regulation shall receive a fine not to exceed fifty (\$50.00) dollars per violation and/or a written warning. In addition, the permit holder must provide training, as directed by the Board of Health, to its employees relative to the proper sale of tobacco products.
- In the case of a second violation within two (2) years of the first violation, seven hundred and thirty days (730), the permit holder and/or individual in charge of the area permitted for tobacco sales, or persons not in compliance with the provisions of this regulation shall receive a fine not to exceed one hundred (100) dollars per violation and/or the permit shall be suspended for

not less than one (1) business day or not more than seven (7) consecutive business days. In addition the permit holder must provide training/re-training, as directed by the Board of Health, to its employees relative to the proper sale of tobacco products.

- In the case of three or more violations within two (2) years of the first violation, seven hundred and thirty (730) days, the permit holder and/or individual 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 two hundred (200) dollars per violation and the permit shall be suspended not less than (2) consecutive business days or not more than thirty (30) consecutive calendar days from the date of suspension. In addition the permit holder must provide training/re-training, as directed by the Board of Health, to its employees relative to the proper sale of tobacco products.
- During such time that a "Permit for Location and Sales" of tobacco products has been suspended for continuous violations of this regulation, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined fifty (\$50.00) dollars per day until said permit is reinstated by the Scituate Health Department or its designated agent(s).

Section IV - Enforcement

Enforcement of this regulation shall be implemented by the Town of Scituate Health Department or its designated agent(s).

Any citizen who desires to register a complaint of non-compliance under this Chapter may do so in writing to the Town of Scituate Health Department or its designated agents(s).

Any individual aggrieved by the willful failure or refusal of any person to comply with the provisions of this regulation may complain in writing to the permit holder and/or individual having control of the area in which the violation takes place. Any permit holder and/or individual having control of the area shall respond in writing within fourteen (14) working days to the complainant that he/she has investigated the complain and has enforced the provisions of this regulation as provided herein.

Any owner, manager, operator, employee or individual may inform person(s) violating this regulation of the appropriate provisions thereof.

Section V - Variance

The Board of Health may, after a public hearing, vary the application of any provision of these regulations for a period of one (1) year with respect to any particular case when the Board of Health finds the enforcement thereof would do manifest injustice.

Every request for a variance shall be made in writing on a form provided by the Board of Health and shall state the specific variance sought and the reason thereof.

Any variance granted must be in writing on a form provided by the Board of Health and shall state the specific variance sought and the reason thereof.

Any variance granted must be in writing with a copy available to the public at all reasonable hours in the office of the Town Clerk and in the office of the Board of Health. Any variance granted must be posted on the premises in a prominent location for the duration that the variance is in effect.

Section VI - Severability

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

Section VII - Effective Date

As voted at a Public Hearing by the Scituate Board of Health on February 6, 2001, the effective date of these regulations shall be March 31, 2001.

SCITUATE BOARD OF HEALTH

Mark Robinson, Chairman
Dr. Robert Hopkins - Member
Francis Lynch - Member

2/15/01