

Regulations of the East Bridgewater Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

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 more than ninety percent (90%) of all smokers begin smoking before the age of eighteen (18) (See, “Preventing Tobacco Use Among Young People,” Surgeon General’s Report, 1994); and whereas an estimated three thousand (3,000) minors begin smoking every day in the United States (See, “Cancer Fact & Figures – 1993,” “American Cancer Society); 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 restricting the sale of tobacco products to youth and young adults, access to tobacco products by individuals under the age of twenty-one (21) is a major problem; and whereas there were 3.62 million electronic cigarette users among US youth middle and high school students in 2018¹. According to a 2014-2014 survey, 81% of current youth electronic cigarette users cited the availability of appealing flavors as the primary reason for use.²

Now, therefore it is the intention of the East Bridgewater Board of Health to regulate the sale of tobacco products and curtail the access of tobacco products by individuals under the age of twenty-one (21).

B. Authority:

This regulation is promulgated pursuant to the authority granted to the East Bridgewater Board of Health by Massachusetts General Laws Chapter 111, Section 31 that 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.

Employee: Any individual who performs services for an employer.

¹ 1. Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Increase in use of electronic cigarettes and any tobacco product among middle and high school students — United States, 2011–2018. *MMWR Morbid Mortal Wkly Rep.* 2018;67(45):1276–1277.

² 2. Villanti AC, Johnson AL, Ambrose BK, et al. Use of flavored tobacco products among U.S. youth and adults; findings from the first wave of the PATH Study (2013-2014)

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

Health care institution: (i) An individual, partnership, association, corporation or trust or a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or (ii) a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. For the purpose of this section, a retail establishment shall be considered a health care institution if it operates at a health care institution or has a health care institution located on or within its premises; provided, however, that a retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product.

Permit Holder: An owner or operator of any establishment engaged in the sale of tobacco products that applies for and receives a tobacco sales permit, 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 of tobacco products.

Private Club: A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but is not limited to, those factors identified in 204 CMR 10.02.

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: 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, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product including but not limited to tobacco rolling papers; and provided further, that “tobacco product” shall not include a product that has been approved by the United States

Food and Drug Administration for the sale of or use as a tobacco cessation product and is marketed and sold exclusively for the approved purpose.

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.

D. Sale of Tobacco Products to Persons Under the Minimum Legal Sales Age Prohibited:

1. Pursuant to M.G.L. Ch. 270, § 6, no person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products to a person under the minimum legal sales age. The minimum legal sales age in the Town of East Bridgewater ("Town") is twenty-one (21) years of age, however that pursuant to the grandfather clause in M.G.L. Ch. 270, § 6, sales shall be allowed to persons who attained the age of eighteen (18) on or before December 30, 2018.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Sections 6 & 6A, referral information for smoking cessation, and the minimum legal sales age 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. These notices shall be provided by the Massachusetts Department of Public Health and made available from the East Bridgewater Board of Health. Such notices shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of tobacco product 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 purchasers 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. For all other cash registers that sell tobacco products, a notice shall be attached which no smaller than nine (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 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 or placed at a height of no less than four (4) feet or more than nine (9) feet from the floor.
3. Identification: Each person shall verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser has reached the minimum legal sales age. Verification is required for any person under the age of 27.

4. All retail sales of tobacco must be face-to-face between the seller and the buyer.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products at retail within the Town of East Bridgewater without first obtaining a tobacco product sales permit issued annually by the East Bridgewater Board of Health.
2. As part of the application process, the applicant will be provided with the East Bridgewater 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 product sales regarding both state laws regarding the sale of tobacco and this regulation, including his/her business agent.
3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco product sales permit can be issued.
4. The fee for a tobacco product sales permit shall be determined by the East Bridgewater Board of Health. All such permits shall be renewed annually by July 1st.
5. A separate permit is needed for each retail establishment selling tobacco.
6. Each tobacco product sales permit shall be displayed at the retail establishment in a conspicuous place.
7. No tobacco product 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 product sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
9. Issuance of a tobacco product 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 product 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 and/or the permit holder has not satisfied any outstanding permit suspensions.

F. Prohibition on the Sale of Tobacco Products by Health Care Institutions:

Pursuant to M.G.L. Ch. 112, § 61A, no health care institutions, as defined herein, shall sell or authorize the sale of tobacco products.

G. Out-of-Package Sales:

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

H. 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.

I. Tobacco Vending Machines:

All tobacco vending machines are prohibited except those Vending Machines that are located in facilities licensed under M.G.L. c. 138, s 12, to serve alcoholic beverages for consumption on the premises, if the vending machine:

1. is equipped with a lockout device that locks out sales from the vending machine unless the locking mechanism is released by an outlet 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 outlet personnel; and
2. is located within the immediate vicinity and exclusive control of outlet personnel such that all purchases are observable by the outlet employee(s)controlling the lock-out device; and
3. is posted with a sign stating that persons under the minimum legal sales age are not permitted to purchase tobacco products and notifying customers of the lock-out device and identifying the outlet employee(s) to contact to purchase tobacco products from the machine.

J. Violations:

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his/her place of business or any person in violation of any section of this regulation. The permit holder shall receive:
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00).

- b. In the case of a second violation within a 12-month period of the current offense, a fine of two hundred dollars (\$200.00) and the permit shall be suspended for three (3) consecutive business days.
 - c. In the case of three violations within a 12-month period of the current offense, a fine of three hundred dollars (\$300.00) and the permit shall be suspended for fifteen (15) consecutive business days.
 - d. In the case of four or more violations within a 12-month period of the current offense, a fine of three hundred dollars (\$300.00) and the permit shall be suspended for one (1) year.
2. The East Bridgewater Board of Health shall provide notice of the intent to suspend a tobacco product sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. 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 therefore in writing. The East Bridgewater Board of Health, after a hearing, may suspend the tobacco product sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco product sales permit. Failure to remove all tobacco products shall constitute a separate and additional violation of this regulation subject to a three hundred dollar (\$300.00) per day fine.
3. Any permit holder who does not pay the assessed fine within twenty-one (21) days from fine issuance may be subject to criminal proceedings, except in a case where there is a pending court appeal.

K. Non-Criminal Disposition:

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

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

L. Enforcement:

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

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

M. 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.

N. Effective Date:

This amended regulation shall take effect on _____.

Signed: