

REGULATIONS OF THE HOLYOKE BOARD OF HEALTH SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21

Section 1: 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 Facts & 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; whereas when persons under twenty one (21) having the ability to purchase and use tobacco increases the access of tobacco products to minors; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Holyoke Board of Health to curtail the access of tobacco products by minors.

The Holyoke Board of Health finds and declares that the purpose of this regulation is to implement a strict and enforceable system to prevent the sale of cigarettes and other tobacco products to persons under the age of twenty one (21) years of age.

Section 2: Authority

This regulation is promulgated pursuant to the authority granted to the Holyoke Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

Section 3: Definitions

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

Bar: A free-standing establishment which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A bar shall not operate a full serving kitchen nor shall the serving of food be the principal business of any portion of a bar.

Business: Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, engineering, architectural or other professional services are delivered.

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 device 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 any liquid or solid, to simulate smoking. 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.

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

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.

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 Products: Any good that is used to contain or is composed of material from plants of the genus *Nicotiana*, or contains the chemical nicotine, including, but not limited to, cigarettes, cigars, tobacco rolling papers, tobacco leaves, liquid nicotine, nicotine gum, and e-cigarettes.

Tobacco Sales Permit: A permit issued by the Holyoke Board of Health which entitles an establishment to sell tobacco products in the City of Holyoke.

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.

Section 4: Tobacco Sales To Persons Under 21 Prohibited

- 4.1 No person shall sell tobacco products or permit tobacco products to be sold to a person less than twenty one (21) years of age.
- 4.2 Each person shall verify by means of 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 every potential purchaser of tobacco products.

- 4.3 All retail sales of tobacco must be face-to-face between the seller and the buyer except in bars with vending machines. (See Section 8)
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Section 5: Persons Selling Tobacco

No business shall allow an employee to sell cigarettes or other tobacco products until such employee reads the Board of Health 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.

Section 6: Posting of State Law

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 hereof 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 Holyoke Board of Health. Such notice 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 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. For all other cash registers that sell tobacco products, a notice shall be attached which is 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.

Section 7: Tobacco Sales Permit

- 7.1 No person shall sell or otherwise distribute tobacco at retail within the City of Holyoke without first obtaining a Tobacco Sales Permit issued annually by the Holyoke Board of Health.
- 7.2 As part of the application process, the applicant will be provided with the Holyoke 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.
- 7.3 Each applicant is required to provide proof of a current Tobacco Sales License issued by the Massachusetts Department of Revenue before a Tobacco Sales Permit can be issued.

- 7.4 Prior to obtaining or renewing a *Tobacco Sales Permit*, each applicant must attend a mandatory Merchant Education Training as provided by the Holyoke Board of Health.
- 7.5 The fee for a *Tobacco Sales Permit* shall be one hundred dollars (\$100.00). Said permit expires at the end of business on June 30 regardless of the issue date, and is renewable annually on or before 4:30 p.m. on June 30 by application. Payment and application for said permit must be received by the Board of Health no later than June 30. An application submitted after 4:30 p.m. on June 30 may be subject to a late fee of twenty-five dollars (\$25.00) for each late application and shall be subject to the penalties in Section 12.7.
- 7.6 A separate *Tobacco Sales Permit* is needed for each location at which tobacco products are sold, including vending machines.
- 7.7 Each *Tobacco Sales Permit* shall be displayed at the retail establishment in a conspicuous place.
- 7.8 No 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.
- 7.9 A *Tobacco Sales Permit* is non-transferable, except a new permit will be issued to a retailer who changes location.
- 7.10 Issuance of a *Tobacco Sales Permit* shall be conditioned on an applicant's written consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- 7.11 A *Tobacco Sales Permit* is issued in the name of the permit holder and in the name of the establishment where tobacco is to be sold.

Section 8: Vending Machines

- 8.1 No person shall install or maintain a vending machine to distribute or sell tobacco products in the City of Holyoke unless all of the following conditions exist:
- A. The vending machine is located in a bar where access is limited to persons age twenty one (21) or older.
 - B. The vending machine shall be equipped with an operational lock-out device approved by the Holyoke Board of Health. Said device shall lock-out sales from the vending machine unless an employee manually releases the locking

mechanism for a single sale. The release mechanism must not allow continuous operation of the vending machine and must not be accessible to customers. Vending machines shall be posted with a sign stating that the machine is equipped with a lock-out device and identify the person(s) to contact to purchase products from the machine.

C. The vending machine shall be located at least ten (10) feet away from entrance and exit doors. The vending machine shall not be located in any hallway, entryway or restroom. The machine shall be located within fifteen (15) feet and in plain view of the regular location of a person designated to supervise the purchase of tobacco from the vending machine.

8.2 Failure of the operator and/or the lock-out device, resulting in the sale of tobacco product(s) to a person under the age of twenty one (21) years, shall be cause for the levy of fines and an order for the owner to remove the vending machine from the premises.

Section 9: 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.

Section 10: Free Distribution/Sampling

No person shall distribute, or cause to be distributed, any free samples of tobacco products. No *Tobacco Sales Permit* holder shall redeem or honor any coupons or vouchers redeemable for tobacco or tobacco products for free within Holyoke.

Section 11: Self-Service Displays

All self-service displays of tobacco products are prohibited.

Section 12: Penalties

12.1 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.

12.2 Should a violation of Sections 4, 9, 10, or 11 occur 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 any consecutive twenty-four (24) month period, a fine of two hundred dollars (\$200.00) and the *Tobacco Sales Permit* shall be suspended for seven (7) consecutive calendar days.

- C. In the case of a third violation within any consecutive twenty-four (24) month period, a fine of two hundred dollars (\$200.00) and the *Tobacco Sales Permit* shall be suspended for thirty (30) consecutive calendar days.
- D. In the case of fourth and subsequent violations within any consecutive twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and the *Tobacco Sales Permit* shall be suspended for one (1) calendar year following the date of permit removal.
- E. In addition to the fine and permit suspension, in the case of each violation, the permit holder or his/her business agent shall be required to attend Merchant Education Training within one month of a finding of a violation.
- 12.3 Whoever violates Sections 5, 6, or 8 shall be punished by a fine of fifty dollars (\$50.00). Any person unlawfully removing a copy so posted while said premises are used for the sale of tobacco products shall be punished by a fine of twenty dollars (\$20.00). Each day any violation exists shall be deemed to be a separate offense.
- 12.4 Any permit holder who fails to pay the assessed fine or who fails to request a hearing within twenty-one (21) days from fine issuance may be subject to criminal proceedings.
- 12.5 Tobacco Sales Permit Suspension Hearing Procedure:
- A. The Holyoke Board of Health shall provide written notice to the permit holder of the intent to suspend a *Tobacco Sales Permit* and notify the permit holder of his/her right to request a hearing before the Holyoke Board of Health.
- B. The notice provided by the Holyoke Board of Health shall state the intent to suspend a *Tobacco Sales Permit* and shall contain the reasons therefore in writing. The Holyoke Board of Health after a hearing may suspend the *Tobacco Sales Permit*. The permit holder has the responsibility to request such hearing in writing within ten (10) calendar days after receipt of the Board of Health notice.
- C. Upon receipt of such request the Board of Health shall set a time and place for a hearing and shall inform the petitioner thereof in writing. The hearing shall be commenced not later than forty-five (45) calendar days after the Board of Health receives the request from the petitioner.
- D. If a written petition for a hearing is not filed with the Board of Health within ten (10) calendar days after the day the notice was served, or if, after a hearing, an order for permit suspension has been sustained in any part, each day's failure to comply with the order as issued or modified, shall constitute an additional offense of the alleged violation.

- 12.6 In the event that a *Tobacco Sales Permit* is suspended by the Holyoke Board of Health 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 an additional offense of the alleged violation.
- 12.7 Any person selling tobacco products without a valid *Tobacco Sales Permit* will be subject to a fine of three hundred dollars (\$300.00) per day.

Section 13: Non-Criminal Disposition

- 13.1 Whoever violates any provision of this regulation may in addition to the suspension or revocation of any applicable permit or license be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, section 21 D or by filing a complaint at the appropriate venue in addition to the suspension or revocation of any applicable permit license.
- 13.2 Each day any violation exists shall be deemed to be a separate offense.
- 13.3 Should a violation of Sections 4, 9, 10, or 11 occur 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 any consecutive twenty-four (24) month period, a fine of two hundred dollars (\$200.00) and the *Tobacco Sales Permit* shall be suspended for seven (7) consecutive calendar days.
 - C. In the case of a third violation within any consecutive twenty-four (24) month period, a fine of two hundred dollars (\$200.00) and the *Tobacco Sales Permit* shall be suspended for thirty (30) consecutive calendar days.
 - D. In the case of fourth and subsequent violations within any consecutive twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and the *Tobacco Sales Permit* shall be suspended for one (1) calendar year following the date of permit removal.
 - E. In addition to the fine and permit suspension, in the case of each violation, the permit holder or his/her business agent shall be required to attend Merchant Education Training within one month of a finding of a violation.
- 13.3 Whoever violates Sections 5, 6, or 8 shall be punished by a fine of fifty dollars (\$50.00). Any person unlawfully removing a copy so posted while said premises are used for the sale of tobacco products shall be punished by a fine of twenty dollars (\$20.00). Each day any violation exists shall be deemed to be a separate offense.

13.4 Any person selling tobacco products without a *Tobacco Sales Permit* will be subject to a fine of three hundred dollars (\$300.00) per day.

13.5 This regulation shall be enforced by the Board of Health of the City of Holyoke or its designated agent(s).

Section 14: Other Applicable Laws

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

Section 15: Enforcement

15.1 This regulation shall be enforced by the Board of Health of the City of Holyoke or its designated agent(s).

15.2 Any person may register a complaint under this regulation by filing a complaint with the Holyoke Board of Health or its designated agent(s) located at the City Hall Annex, Room 306 or by calling (413) 322-5595. After receipt of a complaint the Board shall investigate.

Section 16: Severability

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

Section 17: Variance

Variations shall not be granted to any person, business, employer, firm, corporation, establishment, or agency within the City of Holyoke.

Section 18: Effective Date

This Regulation shall become effective as of June 11th, 2015.

Patricia A. Mertes, APRN, Chair
Robert S. Mausel, MD, Vice Chair
Dalila Hyry-Dermith, Clerk
Brian Fitzgerald, Director of Health

6/11/15 - Robert Mausel

July 19, 1994

Voted to Adopt Regulation "Regulations Affecting Smoking in Certain Places and Youth Access to Tobacco" by unanimous vote.

August 1, 1994

Effective Date

February 17, 1995

Revised Sec. 5.2 Vending machines (V.M.)

September 19, 1995
Revised

October 10, 1995
Revised

August 14, 1996
Revised Sec. on Variance

April 30, 1997
Revised Sec. on Vending Machine and other youth access

June 4, 1997
Revised Sec. on V.M.

September 10, 1997
Revised penalties for youth access and V.M.

May 19, 1999
Revised Sec. on Procedure

June 30, 1999
Revised Sec. on Permit for Location of Tobacco Sales

June 5, 2001
Revised as "Regulations of the Holyoke Board of Health Sale of Tobacco Products to Minors".

June 11, 2015
Revised as "Regulations of the Holyoke Board of Health Sale of Tobacco Products to Persons Under 21"