

Ware Board of Health  
Regulation Restricting Youth Access to Tobacco

Section I: Declaration of Purpose

WHEREAS, tobacco use is a leading public health problem in the Town of Ware and throughout the United States; and

WHEREAS, 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; and

WHEREAS, tobacco use by minors is a continuing problem with grave public health consequences because more than 80% of all smokers begin before the age eighteen and more than 3,000 people begin smoking every day in the United States, and

WHEREAS, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of tobacco products to minors.

Pursuant to Massachusetts General Laws Chapter 111, Section 31, the Ware Board of Health enacts the following Regulations as strict and enforceable system to prevent access to and the illegal sale of tobacco products to minors.

SECTION II: Authority

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

Section III: Definitions

"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 Ware or any agency thereof, which regularly uses the services of one (1) or more employees.

"Individual" means any employee, volunteer or any other person who patronizes an area where tobacco products are sold.

"Retail Store" means any establishment selling goods or articles or personal services to the public.

"Self Service Display" means a display from which individual packs 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 the insertion of coins, trade checks, swipe cards, slips, or any other form of payment.

#### Section IV: Tobacco Sales to Minors Prohibited

##### A. Sale to Minors

In conformance with Massachusetts General Laws, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of eighteen or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of eighteen, shall be punished according to the fine schedule set forth in Paragraph I of this section.

##### B. Posting State Law

In conformance with 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 thereof in the shop or other place used to sell cigarettes at retail.

The notice to be posted shall be provided by the Massachusetts Department of Public Health and made available from the Board of Health of the Town of Ware. 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 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 cigarettes, 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.

##### C. Permit for Location and Sales of Tobacco

1. After the effective date of this Regulation, the Board of Health of the Town of Ware will issue a "Permit for Location and Sales" that will specify the name, address, and approved location per the Board of Health of the Town of Ware or their designated agent(s) for retailers who sell tobacco products.

2. After the effective date of this Regulation, all retailers who are required to hold a state license to sell cigarettes or other tobacco products, will be required to hold and maintain a valid "Permit for Location and Sales" from the Town of Ware for each location at which

tobacco products are sold.

3. After receiving the permit, the merchant will receive signs that states "Sale of cigarettes or any tobacco products to persons under age eighteen (18) is illegal, M.G.L. Chapter 270, Sections 6 & 7." Any merchant not posting said signs will be in non-compliance of this Regulation and subject to penalties per Section III, Paragraph I of this Regulation.
4. The term of the permit shall be one year.
5. The fee for the one year tobacco retailer's "Permit for Location and Sales" is ten dollars (\$10.00) for each tobacco retail location.
6. A "Permit for Location and Sales" is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations.
7. During such time that a "Permit for Location and Sales" of tobacco products has been suspended for 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 according to Section III, Paragraph I until said permit is reinstated by the Board of Health of the Town of Ware or its designated agent(s).

#### D. Tobacco Vending Machines

After the effective date of this Regulation, it shall be unlawful to sell or distribute any tobacco product through a cigarette vending machine or any other device used in the sale or distribution of tobacco products within the Town of Ware, unless said cigarette vending machine is located in a facility where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time.

#### E. Out-of-Package Sales Prohibited

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

#### F. Self-Service Display Restrictions

No retailer shall sell or offer for sale tobacco products by means of a self service display. All humidors including, but not limited to, walk-in humidors must be locked.

#### G. Free Distribution of Tobacco Products

No retailer shall cause to be distributed any free samples of tobacco products.

#### H. Sales by Employees

1. In the event of a prospective purchase of cigarettes or other tobacco products at retail

by a person age twenty-six (26) years old or younger, the employee responsible for completion of the sale shall request and examine photographic identification establishing the purchaser's age as eighteen (18) years or greater as long as such is not in conflict with federal law.

2. No commercial entity selling tobacco products at retail shall allow any employee to sell cigarettes or other tobacco products until such employee reads the Ware Tobacco Control 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.

#### I. Penalties, Fines, Suspension and/or Suspension Hearings of Permit

It shall be the responsibility of the permit holder and/or his or her agent to ensure compliance with all sections of this Regulation pertaining to their place of business. The permit holder and/or his or her agent, or persons involved in violation of any of the provisions of this Regulation may receive:

1. In the case of a first violation, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of twenty-five dollars (\$25.00).
2. In the case of a second violation, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of twenty-five dollars (\$25.00) and the permit shall be suspended for seven (7) consecutive business days.
3. In the case of three or more violations within one (1) year, the permit holder and/or his or her agent, or persons not in compliance with the provisions of this Regulation shall receive a fine of twenty-five dollars (\$25.00) and the permit shall be suspended for thirty (30) consecutive business days.
4. The Board of Health of the Town of Ware shall provide written notice to the permittee of the intent to suspend a Permit for Location and Sales of Tobacco. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Commission's decision and reasons in writing.

#### J. Non-Criminal Disposition

Whoever violates any provision of this Regulation, the violation of which is subject to a specific penalty, 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 on which any violation exists shall be deemed to be a separate offense.

Penalty:           \$25.00 for the first offense

\$25.00 for the second offense  
\$25.00 for the third offense

Section V: Enforcement

Enforcement of this Regulation shall be implemented by the Board of Health of the Town of Ware or its designated agent(s).

Any citizen who desires to register a complaint of non-compliance under the Regulation may do so by contacting the Board of Health of the Town of Ware or its designated agent(s).

Section VI: Severability

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

Section VII: Effective Date

This Regulation shall take effect on August 1, 1999.