

Town of Concord

Bylaw—Sale of Tobacco to Minors

A Town bylaw regulating the sale, vending, and distribution of tobacco within the Town as follows:

Section 1. DECLARATION OF POLICY AND PURPOSE

whereas: cigarette smoking is the chief avoidable cause of death in this country, and

whereas: medical and scientific evidence demonstrates that tobacco usage is addictive and causes serious health problems, and

whereas: the Surgeon General has concluded that cigarettes and other forms of tobacco are habit-forming in the same sense as are drugs such as heroin and cocaine, and

whereas: most cases of tobacco use begin during childhood and adolescence, now

therefore: this bylaw needs to protect the public health by further restricting the sale, vending, and distribution of tobacco in Concord.

Section 2. DEFINITIONS

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

- A. *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.
- B. *EMPLOYEE*: Any individual who performs services for an employer.
- C. *EMPLOYER*: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Concord or any agency thereof, which uses the services of one (1) or more employees.
- D. *MINOR*: Any individual who is under the age of eighteen (18).
- E. *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 this bylaw, or his or her business agent.
- F. *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.
- G. *SELF SERVICE DISPLAY*: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.
- H. *TOBACCO PRODUCT*: Cigarettes, cigars, chewing tobacco, pipe tobacco bidis, snuff or tobacco in any forms.

- I. *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 3 – PERMITS

- A. No person shall sell or otherwise distribute tobacco at retail within the Town of Concord without first obtaining a tobacco sales permit issued annually by the Concord Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Concord are eligible to apply for a permit and sell tobacco products in the specified location in Concord.
- B. As part of the tobacco sales permit application process, the applicant will be provided with this bylaw. Each applicant is required to sign a statement declaring that the applicant has read said bylaw 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 bylaw.
- C. 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.
- D. The fee for a tobacco sales permit shall be determined by the Concord Board of Health annually. All such permits shall be renewed annually by June 1st.
- E. A separate permit is required for each retail establishment selling tobacco.
- F. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
- G. No tobacco sales permit holder shall allow any employees to sell cigarettes or other tobacco products until such employee reads this bylaw 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 bylaw and applicable state laws.
- H. A tobacco sales permit is non-transferable. 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 are satisfied in full.
- I. 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 bylaw.
- J. A tobacco 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.

Section 4 – PROHIBITED ACTS

- A. No person shall sell tobacco products or permit tobacco products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco products to a minor. Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that

the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

- B. All tobacco vending machines are prohibited.
- C. No person shall distribute, or cause to be distributed, any free samples of tobacco products
- D. 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.
- E. All self service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only exception is self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

Section 5 – POSTING

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 thereof 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 Concord Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The 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.

Section 6 – VIOLATIONS AND PENALTIES

- A. Violations of the bylaw may be enforced as provided by the provisions of Town bylaws relating to “Town Bylaws, Violations of,” including the use of non-criminal disposition.
- B. Except when otherwise provided by law, prosecutions for offenses under this bylaw shall be made by a constable, police officer, chief sanitarian of the Board of Health or their Agent(s). Any citizen who desires to register a complaint pursuant to the bylaw may do so by contacting the Concord Board of Health or its designated agent(s) and the Board shall investigate.
- C. Fines for violations shall be in accordance with Appendix A of the Town’s Non-Criminal Disposition Bylaw.
- D. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section 4A of this bylaw pertaining to his or her distribution of tobacco. The violator shall receive:
 - 1. In the case of a first violation, a fine of one hundred dollars (\$100)
 - 2. In the case of a second violation within 24 months of the date of the current violation, a fine of two hundred dollars (\$200) shall be assessed and the tobacco sales permit shall be suspended for seven (7) consecutive business days.

3. In the case of three or more violations within a 24 month period, a fine of three hundred (\$300) shall be assessed and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.
- E. Refusal to cooperate with inspections pursuant to this bylaw shall result in the suspension of the tobacco sales permit for thirty (30) consecutive business days.
 - F. The Concord Board of Health shall provide notice of the intent to suspend a tobacco 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 or its business agent 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. After the hearing, the Concord Board of Health will suspend the tobacco sales permit if the Board finds that a sale to a minor occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. 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 a separate violation of this bylaw.
 - G. All other violations of this bylaw will be subjected to fines of fifty (\$50) dollars per violation.

Section 7. SEPARABILITY

Each part of these regulations is constructed as separate to the extent that if any section, item, sentence, clause, or phrase is held invalid for any reason, the remainder of the regulations shall continue in full force and effect.

Article 51, Town Meeting, May 1991
Amended by Article 47, Town Meeting, April 1995
Amended by Article 66, Town Meeting, April 2002
Amended by Article 66, Town Meeting, April 2010