

May 26, 1998

Revised: October 23, 2001, February 10, 2009

**TOWN OF BERKLY BOARD OF HEALTH
REGULATIONS AFFECTING THE SALE OF TOBACCO PRODUCTS**

SECTION 1 - Authority

There exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, negative birth outcomes, allergies, and irritations to the eyes, nose and throat to both the smoker and the nonsmoker exposed to secondary smoke. Evidence further demonstrates that tobacco is extremely addictive. More than 3,000 young people begin smoking every day in this nation. Since almost 90% of all smokers begin smoking before age eighteen (18), there is an important health need to reduce the easy access to tobacco products by youths through strict enforcement of Massachusetts state law prohibiting sales to minors. Therefore, these regulations are adopted pursuant to Massachusetts General Laws chapter 111, section 31, as reasonable health regulations designed to protect and improve the health of the residents of Berkley.

SECTION 2 – Definitions

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.

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

Minor: Any individual who is under the age of eighteen (18).

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 these regulations, 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 or distribution of tobacco products directly to consumers.

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: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

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 – Tobacco Sales to Minors Prohibited

3.1. In conformance with Massachusetts General Laws chapter 270, section 6, no person or entity shall sell a cigarette, chewing tobacco, snuff, or any tobacco product in any of its forms to any person under the age eighteen (18) or, not being his/her parent or guardian, give a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under age 18.

3.2 All employees selling cigarettes or tobacco products must positively establish the purchaser's age as eighteen (18) or older. A written note or telephone communication from a parent or guardian will not be sufficient to allow a person under the age of eighteen (18) to purchase a tobacco product.

SECTION 4 – Sale by Employees

4.1. No person or entity selling tobacco products shall allow anyone under the age of eighteen (18) to sell cigarettes or other tobacco products. It shall be the responsibility of the permit holder and employer selling tobacco products to ensure that there are no violations of this regulation at his or her establishment.

4.2 No person or entity selling tobacco products shall allow anyone to sell cigarettes or other tobacco products until such employee reads the Board of Health regulations and Massachusetts laws regarding sale of tobacco products and signs a statement of agreement, in a form approved by the Board of Health and to be kept on the premises by the owner, indicating that he or she will uphold said regulations and laws. The employee's signature will verify that the Board of Health regulations and Massachusetts laws have been read by said employee. Such an agreement must be retained by the permit holder and shall be made available for inspection during permit holder's normal business hours, upon request by an agent of the Board of Health.

4.3 Each permit holder and each employee engaged in selling tobacco products must attend a training session held by the Tobacco Control Officer or other designated representative of the Board of Health at a time and place to be arranged with the Board of Health office.

SECTION 5 – Free Distribution/Out-of Package Sales/Self-Service Displays/Vending Machines

5.1. No person or entity shall distribute free products containing tobacco for any promotional or other commercial purposes within the Town of Berkley.

5.2. 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.

5.3. 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 for 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.

5.4. No person, firm, corporation, establishment or agency shall install or maintain a vending machine to distribute or sell tobacco products in the Town of Berkley.

SECTION 6 – Posting

6.1. In conformance with Massachusetts General Laws chapter 270, section 7, a copy of Massachusetts General Laws chapter 270, section 6, must be posted conspicuously by the owner or other person in charge thereof in any shop or other place which sells cigarettes or tobacco products at retail. The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health stating that the sale of tobacco products to persons under age 18 is prohibited. 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. Such notice shall be placed on the cash register or at a distance no greater than 2 feet from the cash register.

6.2 At all other cash registers where tobacco products are sold, a copy of the same notice described in section 6.1 shall be posted in a size no smaller than nine (9) square inches. Such notice must be posted in a manner so that it shall directly face the purchaser and may be readily seen without obstruction by a person standing at or approaching the cash register.

SECTION 7 - Permit for Tobacco Sales

7.1. No person shall sell or otherwise distribute tobacco at retail within the Town of Berkley without first obtaining a tobacco sales permit issued annually by the Town of

Berkley Board of Health. Failure to renew a tobacco sales permit by December 31st will result in a late fee. The fee for a tobacco sales permit and the late fee shall be determined by the Town of Berkley Board of Health annually.

7.2. As part of the tobacco sales permit application process, the applicant will be provided with the Town of Berkley Board of Health regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulations and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both these regulations and the state laws regarding the sale of tobacco.

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. The fee for a tobacco sales permit shall be one hundred twenty-five dollars (\$125.00), payable annually on or before December 31.

7.5. A separate permit is required for each retail establishment selling tobacco.

7.6. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.

7.7. As indicated above, no tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads these regulations and the 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, indicating that he or she has read the regulations and applicable state laws.

7.8. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location. In the event there is a sale, change of ownership, or other transfer of the licensed business, the original license-holder shall immediately notify the Board of Health in advance of the sale, change of ownership, or transfer.

7.9. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections and investigations of his or her retail establishment to ensure compliance with these regulations.

SECTION 8 – Enforcement

8.1. The Berkley Police Department and the designated agents of the Berkley Board of Health shall enforce these regulations and, pursuant to Article 12 of the May 20, 1996, Annual Town Meeting and the Somerset “Non-Criminal Disposition By-law”, may employ the procedures for non-criminal disposition contained in M.G.L. chapter 40, section 21.

8.2. It shall not be considered “entrapment” or any other violation of the law for the Board of Health to engage an individual under the age of 18 years to attempt to purchase cigarettes or other tobacco products for the purpose of monitoring compliance with these regulations.

SECTION 9 – Penalties

9.1. It shall be the responsibility of the permit holder in charge of the area where tobacco products are sold to ensure compliance with all sections of these regulations pertaining to the sale or distribution of tobacco at his or her place of business. In the case of violation of any provision of these regulations, a permit holder in charge of the area permitted for tobacco sales shall receive:

9.1.1. In the case of a first violation, a fine of **one hundred dollars (\$100.00);**

9.1.2. In the case of a second violation within a **twenty-four (24) month period**, a fine of two hundred dollars (\$200.00) and possible suspension of tobacco sales permit for a period of not less than three (3) and not more than thirty (30) days as provided below;

9.1.3. In the case of three or more violations occurring within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) and possible suspension of tobacco sales permit for a period of not less than three (3) and not more than thirty (30) days as provided below; and,

9.1.4. In the case of two or more violations occurring within a twenty four (24) month period, **the Board of Health may hold a public hearing after which, upon finding the permit holder responsible, the Board may suspend the permit holder's tobacco sales permit for a period of not less than three (3) consecutive business days and not more than thirty (30) consecutive business days. For purposes of such suspensions, the Board shall make the determination of whether or not two or more violations have occurred, notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offenses.**

9.1.5. A violation shall be considered a first violation in cases where no violation has occurred during the previous twenty-four (24) months, even though there may be previous violations on record.

9.2. Refusal to cooperate with investigations or inspections pursuant to these regulations shall result in a public hearing after which, upon finding the permit holder responsible, the Board may suspend the permit holder's tobacco sales permit for a period of not less than three (3) consecutive business days and not more than thirty (30) consecutive business days.

9.3. In addition to the monetary fines set forth above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to a fine in the amount of three hundred (\$300) dollars per day and a public hearing after which, upon finding the permit holder responsible, the Board may suspend all permits issued by the Board of Health and held by the permit holder for a period of not less than three (3) consecutive business days and not more than thirty (30) consecutive business days.

9.4. The Town of Berkley Board of Health shall provide notice of its intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor 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 representative shall have an opportunity to be heard at such hearing and shall be notified in writing of the Board of Health's decision and the reasons for it. After the hearing and a finding that the permit holder is responsible, the Board of Health may suspend the tobacco sales permit as set forth above. Upon suspension of a tobacco sales permit, the permit holder must remove all tobacco products from the retail establishment. Failure to remove all tobacco products shall constitute a separate violation of these regulations.

9.5. Any permit holder who does not pay an assessed fine within twenty-one days from issuance may be subject to criminal proceedings.

SECTION 10: 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.

Effective Date: _____

BERKLEY BOARD OF HEALTH

James Romano, Chairman

Steve Rapoza, Member

Dan Fournier, Clerk