



[The following has been transcribed from the City of Boston's recently amended Youth Access Ordinance, CBC Chapter XVI, Section 40; this is not an official copy]

## AN ORDINANCE

# LIMITING TOBACCO ACCESS BY YOUTH

### Section I: 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 City of Boston or any agency thereof, that regularly uses the services of two (2) 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*** (also known as free-standing display) means a display form 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 II: 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 H 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 Public Health Commission of the City of Boston. Such notice shall be at least 48 square inches and shall be posted at the cash register that receives the greatest volume of single cigarette package sales in such a manner 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 that 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, and be placed at a height of no less than four (4) feet nor more than (9) feet from the floor.

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

- 1. After the effective date of this ordinance, the Public Health Commission of the City of Boston will issue a “Permit for Location and Sales of Tobacco Products” only if (a) the applicant’s permit is not currently in a term of suspension and (b) the applicant is not currently in violation of these sections or any regulations with any violations left unremedied or any fines left unpaid, and such permit will specify the name, address, and approved location per the Public Health Commission of the City of Boston or their designated agent(s) for retailers who sell tobacco products.**
- 2. After the effective date of this ordinance, 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 of Tobacco Products” from the City of Boston for each location at which tobacco products are sold.**
- 3. Subsequent to receipt of the permit, the Boston Public Health Commission shall make available, and the successful applicant/retailer shall obtain and post in a clear and conspicuous manner, signage that states “Sale of cigarettes or any tobacco products to persons under the age of eighteen (18) years is illegal under M.G.L., Chapter 270, Sections 6 and 7.” The Boston Public Health Commission shall make available, and the successful applicant/retailer shall obtain and post in a clear and conspicuous manner, signage that discloses (a) current information for reporting violations of the provisions of this ordinance and (b) current referral information about smoking cessation. The Boston Public Health Commission may provide updated signage to retailers during the term of the permit. Any merchant that does not post the signage required under this section shall be deemed to be in non-compliance of these provisions and shall be subject to penalties promulgated by the Boston Public Health Commission.**
- 4. The term of the permit shall be one (1) year.**
- 5. The fee for one (1) year tobacco retailer’s “Permit for Location and Sales of Tobacco Products” is one hundred dollars and no cents (\$100.00) for each tobacco retail location.**
- 6. A “Permit for Location and Sales of Tobacco Products” 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 Ordinance, 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 II, H, until said permit is reinstated by the Public Health Commission of the City of Boston or its designated agent(s).**

#### **D. Tobacco Vending Machines**

**After the effective date of this Ordinance, 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 City of Boston, unless said machine:**

- 1. Is located in a private club or bar licensed by the Licensing Board of the City of Boston to sell or serve alcoholic beverages; and,**

2. Is equipped with a lock-out device and posted with a sign not less than six inches by sixteen inches reading, "Attention! This machine is equipped with a lockout device. To purchase a tobacco product, you must first see the person in charge."

**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 (also known as "free standing display") unless such display is in strict compliance with the regulations promulgated by the Office of the Attorney General, specifically including but not limited to 940 CMR 21.04.

**G. 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 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 Boston Tobacco Control Ordinance 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 understands the Ordinance.

**H. Penalties, Fines, Suspension, and/or Suspension Hearings of Permit**

It shall be the responsibility of the permit holder and/or individual in charge of the area where tobacco products are being sold to ensure compliance with all sections of this Ordinance pertaining to their place of business. The permit holder and/or individual in charge of the area permitted for tobacco sales, or persons involved in violation of any of the provisions of this Ordinance may receive:

1. In the case of a first (1) violation, the permit holder and/or individual in charge of the area permitted for tobacco sales, or persons not in compliance with the provisions of this Ordinance shall receive a fine of one hundred dollars (\$100.00).
2. In the case of a second (2) violation, the permit holder and/or individual in charge of the area permitted for tobacco sales, or persons not in compliance with the provisions of this Ordinance shall receive a fine of two hundred dollars (\$200.00) and the permit shall be suspended for seven (7) consecutive business days.
3. In the case of three (3) violations within one (1) year, the permit holder and/or individual in charge of the area permitted for tobacco sales, or persons not in compliance with the provisions of this Ordinance shall receive a fine of three hundred dollars (\$300.00) and the permit shall be suspended for thirty (30) consecutive business days.

4. In the case of four (4) or more violations within one (1) year, the permit holder and/or individual in charge of the area permitted for tobacco sales, or person not in compliance with the provisions of this section shall receive a fine of four hundred (\$400.00) dollars and the permit shall be suspended for sixty (60) consecutive business days and, upon public notice and comment, the permit may be permanently revoked at the sole discretion of the Public Health Commission.
5. The Public Health Commission of the City of Boston shall provide written notice to the permittee of the intent to suspend a Permit for Location and Sales of Tobacco Products. 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.
6. Any permit fees and fines collected under this ordinance shall be used for enforcement of these regulations or for educational programs on the harmful effects of tobacco products.

#### I. Non-Criminal Disposition

Whoever violates any provision of this Ordinance, 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 21D, 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:     \$100 for the first offense  
               \$200 for the second offense  
               \$300 for the third offense  
               \$400 for the fourth offense in addition to  
               the provisions of CBC 16-40.2(h)(4)

#### Section III: Enforcement

Enforcement of this Ordinance shall be implemented by the Public Health Commission of the City of Boston or its designated agent(s).

Any citizen who desires to register a complaint of non-compliance under the Ordinance may do so by contacting the Public Health Commission of the City of Boston or its designated agent(s).

#### Section IV: Public Education

The Public Health Commission of the City of Boston shall engage in a continuing program to explain and clarify the purposes and requirements of the Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Such program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance. The Public Health Commission of the City of Boston shall respond to any requests from tobacco retailers for assistance in training sales personnel.

#### Section V: Severability

If any provision, clause, sentence, or paragraph of this Ordinance 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 Ordinance are declared to be severable.