

INTRODUCTION

The Auburn Board of Health has taken interest in health issues relating to tobacco use, smoking and the related health effects of second-hand smoke (ETS). In 1986, the Board promulgated, in its Code of Regulations, Section 9 "Smoking in Public Places" regulations providing for tobacco control in restaurants and workplaces.

The goal of the Auburn Board of Health is to provide a broad range of personal, community and environmental services to improve the quality of life of persons who visit, live, or work in Auburn. Among the actions taken by the Auburn Board of Health in meeting these goals are efforts to reduce existing and potential health and environmental hazards, the provision of health education and personal health services, with emphasis on prevention and early detection of chronic disease, including improved management of lifestyles affecting health and the control of diseases.

HISTORY OF TOBACCO CONTROL IN AUBURN

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| 1986 | Board of Health regulations provides prohibition, restriction of smoking in public places and restaurants. |
| 1993 | Auburn Board of Health is awarded a grant from the Massachusetts Tobacco Control Program (MTCP)* by which the Auburn Tobacco Control Initiative (ATCI) is established. |
| 1993 | Auburn Youth and Family Services contracts with the Auburn Board of Health to provide services associated with the ATCI. |
| 1993 | Auburn Board of Health adopts rules and regulations related to the use and possession of tobacco products on Auburn Public School property. |
| 2000 | Auburn Board of Health is awarded a four-year grant from the Massachusetts Tobacco Control Program (MTCP)*. |
| 2001 | Auburn Board of Health adopts rules and regulations related to the restriction of smoking, sale, vending and distribution of tobacco and tobacco products within the Town of Auburn. |
| 2004 | The state of Massachusetts amends the Massachusetts General Laws to protect public health by minimizing exposure to second hand smoke. |
| 2007 | Auburn Board of Health amends local rules and regulations related to tobacco use and Sales to conform to MGL 270 as amended. |
| 2010 | Auburn Board of Health amends local rules and regulations related to tobacco use and tobacco youth access to address concerns brought forth with the introduction of new emerging tobacco products. |

* MTCP is a statewide tobacco education campaign that intends to cut Massachusetts's tobacco use in half by 1999. The program is funded by the \$.25 cent excise tax on cigarettes mandated by voters in the 1992 November election through ballot Question #1.

SECTION 9.1 DECLARATIONS OF POLICY AND PURPOSE

There exists conclusive evidence that tobacco smoke causes cancer, lung cancer, respiratory diseases, cardiovascular disease, negative birth outcomes, allergies, gum disease, as well as irritations to the eyes, nose, mouth and throat. Both smokers and those exposed to second-hand smoke (ETS) are at risk.

Ongoing research further attests to the health hazards of second-hand smoke (ETS). Elimination of second-hand smoke will substantially prevent the amount of severe headaches, upper respiratory problems, cancer and heart-related deaths.

The use of so-called smokeless tobacco has been shown to cause gum disease, cancer and heart-related disease.

More than ninety percent (90%) of all smokers begin smoking before the age of eighteen (18) (the minimum age a patron must be for a retailer to sell tobacco in the Commonwealth) and an estimated three thousand (3,000) minors begin smoking every day in the United States. There is therefore, an important health need to reduce easy access to tobacco products by youths through strict enforcement of the state laws prohibiting sales to minors (MGL C. 270, § 6 & 6A).

9.2: AUTHORITY

These regulations are adopted pursuant to Massachusetts General Laws, Chapter 111, Section 31, as health regulations designed to protect and improve the health of the residents of the Town of Auburn.

9.3: ADOPTION OF REGULATION

These amendments are hereby adopted by vote of the Board of Health of the Town of Auburn on March 14, 2011. These amendments shall supersede all previous Board of Health amendments or regulations pertaining to the use and sale of tobacco and tobacco products in the Town of Auburn, MA.

MGL ch.270 § 22: Smoking in Public Places, and MGL C. 270 § 6: Tobacco; sale or gift to minors, and MGL C. 270 § 6A: Sale of cigarette rolling papers to minors, and 105 CMR 661.000: Regulations Implementing chapter 270 §22, are hereby adopted as a local regulation for the Town of Auburn with the following superseding amendments:

9.4: DEFINITIONS

The definitions for the following terms shall be struck and replaced with:

- (1) E-Cigarette: Any electronic delivery product 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 nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name or design. E-cigarettes are a tobacco product within the definition of these regulations
- (2) Employee: An individual or person who performs a service whether for compensation or not for an employer including a volunteer, a contract employee, temporary employee, and independent contractors
- (3) Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees.

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- (4) Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and accessed by 1 or more doorways or portals, including but not limited to an office, function room or hallway.
- (5) Nicotine delivery product: Any article produced or manufactured wholly or in part of a tobacco plant or a tobacco substitute; or otherwise containing nicotine that is expected or intended for human consumption. Nicotine delivery product shall not include a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that purpose. A nicotine delivery product is a tobacco product within the definition of these regulations
- (6) Outdoor space: An outdoor area, open to the air that is not enclosed by a wall or side covering.
- (7) Smoking or smoke: The lighting or vaporizing of a cigar, cigarette, pipe, nicotine delivery product, E-cigarette, or tobacco product or possessing a lighted or activated cigar, cigarette, pipe, nicotine delivery product, E-cigarette, or other tobacco or tobacco product designed to be combusted or vaporized and inhaled.
- (8) Retail tobacco store: An establishment, which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Auburn Board of Health.
- (9) Tobacco and Tobacco Products - Cigarettes, cigars, pipe tobacco, bulk tobacco, chewing tobacco, snuff or tobacco in any of its forms including e-cigarettes and other nicotine delivery products.

9.5: PROHIBITION OF SMOKING IN PUBLIC PLACES

9.5.1: In addition to those locations defined in MGL ch.270 § 22: Smoking in Public Places and 105 CMR 661.000: Regulations Implementing ch.270 §22 smoking shall be prohibited in the following locations

- (1) No person shall smoke in any area within twenty-five (25) feet of an entranceway of any space designated by MGL ch.270 § 22: Smoking in Public Places, 105 CMR 661.000: Regulations Implementing ch.270 §22, or these regulations as a "no smoking area".
- (2) No person shall smoke in any sports arena, court, ball field, theatrical or performing venue, or other venue, whether an enclosed or outdoor space, where athletes, actors, or other entertainers perform or where persons gather to view performances, competitions or other entertainments.
- (3) No person shall smoke in private residences during such time when the residence is utilized as part of a business that has employees, uses volunteers, allows access by clients or allows access by the general public.
- (4) No person, in selling, vending, or distributing any tobacco, e-cigarettes, or nicotine delivery product, shall allow sampling of the product, including retail tobacco stores
- (5) No person, employer, or other person having control of any premises shall permit a person to smoke where smoking is prohibited by MGL ch.270 § 22: Smoking in Public Places, 105 CMR 661.000: Regulations Implementing ch.270 §22, or these regulations.

9.6: TOBACCO VENDING

9.6.1: Permits

- (1) No person, firm, corporation establishment agency or other entity shall sell, vend or otherwise provide tobacco, e-cigarettes or nicotine delivery products within the Town of Auburn without a valid, current Tobacco Sales Permit issued by the Auburn Board of Health.

- (2) No Tobacco Sales Permit holder shall allow any employee to sell tobacco, e-cigarettes or nicotine delivery products until such employee reads the Board of Health regulations and state laws regarding 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.
- (3) Issuance of a Tobacco Sales Permit shall be conditioned on an applicants consent to unannounced, periodic inspections of his or her retail establishment to ensure compliance with this regulation.
- (4) The application cost for the annual Tobacco Sales Permit shall be determined and set as adopted and thereafter amended in of the Town of Auburn Board of Health Code of Regulations §18: Fees.
- (5) Permits renewed after the effective date are subject to a late fee established and set as adopted and thereafter amended in of the Town of Auburn Board of Health Code of Regulations §18: Fees.
- (6) Tobacco Sales Permit shall be specific as to location and permit holder. Each location shall require a separate Tobacco Sales Permit.
- (7) A Tobacco Sales Permit shall be renewable annually on July 1.
- (8) A Tobacco Sales Permit shall not be transferable as to location or permit holder.
- (9) All required permits shall be displayed in a conspicuous manner, visible to patrons of the establishment.

9.6.2 PROHIBITED PRACTICES FOR SALE OR DISTRIBUTION

1. It shall be a violation to sell, vend or otherwise distribute tobacco products, e-cigarettes, or nicotine delivery products from a mobile or non-permanent location.
2. It shall be a violation to sell, vend or otherwise distribute tobacco products e-cigarettes, or nicotine delivery products from a vending machine.
3. It shall be a violation to vend or otherwise distribute free samples of tobacco products, e-cigarettes, or nicotine delivery products.
4. It shall be a violation to repackage for sale, vending or other distribution, any tobacco products, e-cigarettes, or nicotine delivery products, or to sell vend or distribute any cigarette package that contains fewer than 20 cigarettes, including single cigarettes.
5. No tobacco products, e-cigarettes, or nicotine delivery products on display shall be accessible to customers or the general public. All self-service displays of tobacco products, e-cigarettes, or nicotine delivery products are prohibited.

9.6.3 YOUTH ACCESS - TOBACCO SALES TO MINORS PROHIBITED POSITIVE IDENTIFICATION

1. It shall be a violation to sell, vend, or otherwise distribute tobacco, e-cigarettes, or nicotine delivery product to persons under 18 years of age.
2. All employees selling cigarettes, chewing tobacco or other tobacco, e-cigarettes, or nicotine delivery products in any form will positively establish the purchaser's age as eighteen (18) years or older by means of a government issued photographic identification containing the bearer's date of birth.

9.7.1 PENALTIES

a. VENDING, SELLING, OR DISTRIBUTING WITHOUT A VALID PERMIT:

Any person selling tobacco, e-cigarettes, or nicotine delivery products at retail without a valid Tobacco Sales Permit shall be punished by a fine of one hundred dollars (\$100.00) each day a person or establishment sells tobacco or products at retail without a valid Tobacco Sales Permit shall constitute a separate violation.

b. VIOLATIONS OF PROHIBITED PRACTICES FOR SALE OR DISTRIBUTION

Any person or establishment who violates § 9.6.2 of this code: PROHIBITED PRACTICES FOR SALE OR DISTRIBUTION shall be punished by a fine of one hundred dollars

(\$100.00). Each day a person or establishment violates § 9.6.2 of this code shall constitute a separate violation.

c. SELLING, VENDING OR DISTRIBUTING TO MINORS

Any person who sells a cigarette, chewing tobacco, snuff, or any tobacco, e-cigarettes, or nicotine delivery products in any of its forms to any person under the age of eighteen (18) or, not being his/her parent or guardian, gives a cigarette, chewing tobacco, snuff, tobacco, e-cigarettes, or nicotine delivery products in any of its forms to any person under the age of eighteen (18), shall be punished according to and in conformance with Massachusetts General Laws, C. 270, § 6 & 6A, as it exists and may hereafter be amended with the following local amendments:

1st offense: \$100 fine.

2nd offense within 24 months of first offense: \$200 fine and 7 day suspension of the Auburn Retail Tobacco Sales Permit.

3rd offense within 24 months of first offense: \$300 fine, and 30 day suspension of Auburn Retail Tobacco Sales Permit.

4th offense within 24 months of first offense: Revocation of Auburn Retail Tobacco Sales Permit.

9.7.2: NOTIFICATION

The Auburn Board of Health shall provide notice of the intent to suspend or revoke a tobacco sales permit. Said notice shall contain the reasons therefore and establish a time and date for a hearing. The permit holder or his/her agent shall have an opportunity to be heard and present evidence at such hearing. Following said hearing, the permit holder shall be notified of the Board of Health's decision and reasons therefore in writing.

9.7.3: SUSPENSION AND REVOCATION OF PERMIT

If a retailer's Auburn Retail Tobacco Sales Permit is suspended or revoked the retailers must remove all tobacco products from sales area(s). Retailers who's permit is suspended must also post a sign supplied by the Board of Health at all customer entrances and at all points of sale, which notify the public that the store is prohibited from selling tobacco products until further notice.


9.8: AUTHORITY FOR ENFORCEMENT

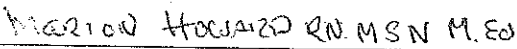
Auburn Police Department, Auburn Board of Health and their agents and designees are hereby authorized to enforce this code.

9.9: 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.

AS VOTED AND APPROVED
BY THE AUBURN BOARD OF HEALTH ON
MARCH 14, 2011


Raymond E. Gauthier, Chairman


Marion D. Howard, Vice-Chairman