

City of Findlay, Ohio

FINDLAY CITY BOARD OF HEALTH

REGULATION 2001-01

Section 1000. TITLE

This regulation shall be known as the Sale of Tobacco to Minors.

Section 1001. FINDINGS AND PURPOSE

The City of Findlay Board of Health finds that youth addiction to tobacco products is a public health problem with grave health consequences. More than half of all smokers begin smoking before the age of fourteen (14), and 90% begin by the age of nineteen (19). The average age of first use of tobacco products is now eleven (11) to fifteen (15) years of age. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarettes and other tobacco products. Therefore, the purpose of this regulation is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

Section 1002. DEFINITIONS

As used in this regulation:

- (a) "License" means a license issued by the City of Findlay Board of Health for retail sale of tobacco products.
- (b) "Licensee" means the holder of a valid license for the retail sale of tobacco products.
- (c) "Minor" means any person under eighteen (18) years of age.
- (d) "Public Place" means any area to which the public is invited or in which the public is permitted, including, but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the city, and any school district, or any park district.
- (e) "Retailer" means a person or entity who offers or sells tobacco products or accessories to consumers.
- (f) "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental and access is restricted to eighteen (18) years of age and older, unless accompanied by a parent or legal guardian.
- (g) "Self-Service Displays" means open displays of tobacco products that the public has access to without the intervention of a store employee.
- (h) "Tobacco Product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco or any other form of tobacco or tobacco papers which may be utilized for smoking, chewing, inhalation or other means of ingestion.
- (i) "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 currency, trade checks, or slugs.
- (j) "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased.
- (k) "Sales Transaction" is a sale or purchase of tobacco products per instance regardless of quantity.

Section 1003. POSTING OF SIGNS

Every place in the City where tobacco products are sold shall display at all times in a prominent place on the premises thereof, a printed card which shall be furnished by the City of Findlay Board of Health and which shall read substantially as follows:

OHIO REVISED CODE:

Forbids anyone under eighteen (18) years of age to purchase, attempt to purchase, possess, or use cigarettes, tobacco products or papers.

Forbids merchants to sell, give or furnish any tobacco products to anyone under eighteen (18) years of age.

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Merchants must require photographic age identification for the sale of tobacco products if the purchaser appears under twenty-seven (27) years of age.

Merchants selling tobacco products to anyone under eighteen (18) years of age will be subject to fines or loss of licensure to sell tobacco products.

Section 1004. SALE OF TOBACCO TO MINORS PROHIBITED

No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, or other tobacco products, or any agent, employee, or representative of the manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, or other tobacco products shall do any of the following:

1. Give, sell, or otherwise distribute cigarettes, or other tobacco products to any person under eighteen (18) years of age;
2. Give away, sell or distribute cigarettes, or other tobacco products in any place that does not have posted in a conspicuous place a sign stating giving, selling or otherwise distributing cigarettes, or other tobacco products to a person under eighteen (18) years of age is prohibited by law.

Section 1005. IDENTIFICATION REQUIRED

No retailer shall sell cigarettes or other tobacco products to an individual that appears under the age of twenty-seven (27) without examining photographic identification for the purpose of establishing the purchaser's age as eighteen (18) or greater.

Section 1006. LICENSE REQUIRED

It shall be unlawful for a retailer to sell, give, furnish, or otherwise provide cigarettes or other tobacco products unless that retailer holds and maintains a valid license from the City of Findlay Board of Health for each location in which tobacco products are sold. All such licenses shall be renewed annually. This section shall be effective sixty (60) days from the date the City of Findlay Board of Health adopts this regulation.

Section 1007. LICENSE APPLICATION AND FEE

Application for a license hereunder shall be made in writing to the City of Findlay Board of Health and shall include the name of the business applying for a license; the name(s) and signature(s) of the owner(s) of the business; and the address at which the sale, offer to sell, give away, or delivery will take place. In the case of a corporation, the name of said corporation and the corporation's designee (vendor) shall be included.

The fee for obtaining or renewing a license shall be established by the City of Findlay Board of Health or their designee, and shall be sufficient to fund the administration, implementation, and enforcement of this regulation.

Section 1008. NON-TRANSFERABILITY

A tobacco retail license is non-transferable, except a new license will be issued to a tobacco retailer who

changes locations.

Section 1009. TOBACCO VENDING MACHINES: ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS TO MINORS

- a. Any person, firm or corporation that owns, leases, possesses, or controls one or more tobacco vending machines shall obtain a valid license for each machine pursuant to Section 1007.
- b. A vending machine must be located and supervised as outlined in section 2927.02 of the Ohio Revised Code and sales of tobacco products to minors at a vending machine location are prohibited.

Section 1010. MINIMUM AGE TO SELL TOBACCO PRODUCTS

It is unlawful for any licensee to permit any person under eighteen (18) years of age to sell tobacco products.

It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. It is unlawful to sell cigarettes in packages of fewer than ten (10) cigarettes per package.

Section 1012. TOBACCO SAMPLES PROHIBITED

No licensee or other entity shall distribute or furnish to minors without charge or at nominal charge, or cause to be furnished or distributed without charge or at nominal charge, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, in any public place or at any event open to the public.

Section 1013. VENDOR ASSISTED SALES

It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales except in a retail tobacco stores.

Section 1014. FINES AND LICENSE SUSPENSION

- a. A licensee, or any agent, employee, or representative of said licensee, found in violation of Section 1003, 1004, 1009, 1010, 1011, 1012 or 1013 by the health commissioner after an opportunity to be heard may be subject to the following:
 1. In the case of a first violation, the fine of two hundred dollars (\$200) will be waived if the licensee and (in the case of an illegal sale) the sales clerk (if other than the licensee), have a hearing with the health commissioner and develop a plan for appropriate corrective action. This hearing shall occur within fourteen 14 days after receipt of the request for such hearing. Hearing dates may be continued by City of Findlay Board of Health. The licensee will be notified in writing of the penalties levied for further violations.
 2. In the case of a second violation, of any of the above noted sections in (a), in a two year period, the licensee may be fined two hundred dollars (\$200). If the violation results from a sale to a minor (Section 1005), the clerk participating in the sale will be responsible for 50% of the amount of the fine.
 3. In the case of three violations with in a two-year period the license may be suspended for three (3) consecutive business days. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. (Signage issued by the City of Findlay Board of Health, notifying the public of vendor license suspension, will be posted.)
 4. In the case of four violations within a two-year period, the license may be suspended for thirty (30) days. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public

while the license is suspended. (Signage issued by the City of Findlay Board of Health, notifying the public of vendor license suspension, will be posted.)

5. In the case of five or more violations within a two-year period, the license may be suspended for six (6) months. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. (Signage issued by the City of Findlay Board of Health, notifying the public of vendor license suspension, will be posted.)
- b. The Health Commissioner or his designee shall evaluate licensee locations for compliance with Sections 1003, 1004, 1009, 1010, 1011, 1012, and 1013 by inspection or sales compliance checks. Based on the Centers for Disease Control and Prevention guidelines, up to four (4) compliance checks will be performed per year, with a check once to each vendor before repeat checks. After a violation the licensee will not have another compliance check until final resolution of the current violation. Compliance checks will be performed by youth age sixteen (16) or seventeen (17) who have a valid drivers license (verified by the sanitarian), under the supervision of an adult, and with written consent to participate from a parent or guardian. The licensee will be notified in writing of the results of the above evaluations within seven (7) business days. In the case of a violation, notification will be by certified mail, and the licensee must request a hearing with the Health Commissioner within thirty (30) days following notification of the violation. The licensee may request a hearing before the City of Findlay Board of Health for a violation of Section 1014 a, (# 3, # 4 and# 5). Rulings made by the Health Commissioner and/or the City of Findlay Board of Health regarding a fine or suspension of a license, after adequate hearing, shall be final.

Section 1015. PENALTY FOR FAILURE TO PURCHASE A LICENSE

A violation of section 1006 of this regulation subjects the licensee, or anyone required to be a licensee, to a fine of \$100 per day. The Health Commissioner or his designee shall have the authority to enforce this section.

Section 1016. NONRETALIATION

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reported violations of any provisions of this regulation, unless the employee was responsible for a violation.

Section 1017. PUBLIC EDUCATION

The Health Commissioner or his designee shall engage in a continuing program to explain and clarify the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with this regulation semi-annually. Public education will also promote an awareness of the grave health consequences of tobacco use.

Section 1018. SEVERABILITY

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

Section 1019. EFFECTIVE DATE

That this regulation shall take effect on June 1, 2001

First Reading: February 20, 2001

Second Reading: March 20, 2001

Public Hearing: April 17, 2001

Third Reading: April 18, 2001

Date Adopted: April 18, 2001

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President Pro Tempore
Findlay City Board of Health

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Findlay City Board of Health