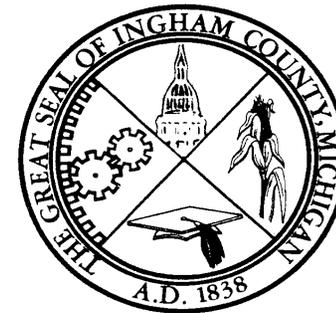


INGHAM COUNTY

**REGULATION TO REQUIRE A
LICENSE FOR THE RETAIL SALE
OF TOBACCO, PROHIBIT SALE
OF TOBACCO TO MINORS,
AND TO RESTRICT LOCATION OF
TOBACCO VENDING MACHINES**



**Effective January 1, 1993
as amended September 23, 2008**

For more information call:

Ingham County Health Department
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INGHAM COUNTY

REGULATION TO REQUIRE LICENSE FOR THE RETAIL SALE OF TOBACCO, AND TO PROHIBIT SALE OF TOBACCO TO MINORS, AND TO RESTRICT LOCATION OF TOBACCO VENDING MACHINES

ARTICLE I – TITLE, AUTHORITY, JURISDICTION, PURPOSE AND ADMINISTRATION

1-1 Title – This regulation shall be identified by the title “Regulation to Require License for Retail Sale of Tobacco, to Prohibit Sale of Tobacco to Minors, and to Restrict Location of Tobacco Vending Machines.”

1-2 Authority – This regulation is hereby adopted pursuant to authority conferred upon local health departments by Section 244(1) of the Michigan Public Health Code, 1978 P.A. 368, as amended.

1-3 Jurisdiction and Administration

(1) This regulation shall have effect throughout Ingham County in all areas incorporated and unincorporated, which includes cities, villages, and townships.

(2) The Health Officer shall have responsibility for administering and enforcing this regulation, including all amendments hereafter adopted unless otherwise specifically stated.

1-4 Purpose

(1) Ingham County hereby finds and declares that:

(a) the U.S. Surgeon General has identified cigarette smoking as the single most important preventable cause of premature morbidity and mortality.

(b) the Director of the National Institute on Drug Abuse has concluded that the majority of Americans who die each year from cigarette smoking “became addicted to nicotine as adolescents before the age of legal consent.”

(c) the selling, giving, or furnishing of tobacco products to a person under 18 years of age is prohibited by the Michigan Youth Tobacco Act, 1915 P.A. 31, as amended.

(d) studies have shown that a significant number of children under the legal age to purchase tobacco are still able to do so either directly or through vending machines.

(2) This regulation is hereby adopted to safeguard the public health by requiring a license to engage in the retail sale of tobacco, by prohibiting the sale of tobacco to minors, and by restricting the location of tobacco vending machines so as to limit access by minors.

1-5 Right of Entry and Inspection

(1) The Health Officer, or any other person charged with enforcement of this regulation, after giving proper identification, may inspect any matter, thing, premise, place, person, record, vehicle, incident, or event as provided for by Section 2446 of the Michigan Public Health Code, 1978 P.A. 368, as amended.

(2) The Health Officer may apply for an inspection or investigation warrant pursuant to Section 2242 of the Michigan Public Health Code, 1978 P.A. 368, as amended, to assure compliance with this regulation and other laws that the Health Officer has the duty to enforce.

(3) It shall be unlawful for any person to molest, willfully oppose, verbally abuse or otherwise obstruct the Health Officer, or any other person charged with enforcement of this regulation during the routine performance of his or her duties.

(4) The Health Officer may request the assistance of the Ingham County Sheriff's Department, or other police agency or peace officer when necessary to execute his or her official duty in a manner prescribed by law.

1-6 Severability – If any section, subsection, clause or phrase of this regulation is for any reason declared unconstitutional or invalid, it is hereby provided that the remaining portions of this regulation shall not be affected.

1-7 Other Laws and Regulations

(1) This regulation is supplemental to the Michigan Public Health Code, 1978 P.A. 368, as amended, and to other statutes duly enacted by the State of Michigan relating to the public health and safety. Where the provisions of any other state law, local ordinance or regulation, or administrative rules apply, the more restrictive of any or all laws, ordinances, regulations or rules shall prevail.

(2) This regulation shall be liberally construed for the protection of the health, safety, and welfare of the people of Ingham County. This regulation shall control over a less stringent provision enacted by a local governmental entity for the protection of public health.

(3) Neither the Health Officer nor any other person empowered to enforce the provisions of this regulation shall knowingly implement provisions of this regulation if in so doing a violation of any state statute, regulation or rule would exist.

1-8 Amendments – Ingham County may amend, supplement or change this regulation or portions thereof, subject to the approval of the Board of Commissioners for Ingham County.

1-9 Approval and Effective Date – This regulation shall become effective on January 1, 1993.

1-10 Power to Establish Policy and Guidelines

(1) The Health Officer is hereby granted the authority to establish policies and guidelines, not in conflict with the purpose and intent of this regulation, for the purpose of carrying out the responsibilities herein delegated to the Health Officer by law.

(2) All such policies and guidelines shall be in writing and shall be kept in a policy file available for public inspection upon request. These policies and guidelines are subject to review and approval by the Human Services Committee of Ingham County Board of Commissioners.

1-11 Public Education – The Health Officer shall conduct public education programs directed at informing tobacco retailers and the general public about laws, rules and regulations related to tobacco sales, the health effects of tobacco use, and resources for tobacco control programs.

1-12 Investigations – The Health Officer shall conduct investigations and make recommendations to the County Board of Commissioners as to the effectiveness of this regulation in denying access of tobacco products to minors and provide periodic reports on the rate of tobacco sales to minors in Ingham County.

1-13 Complaints – Complaints received by the department may be made in writing or over the telephone. The department may develop forms on which a complainant may describe the nature of a complaint.

ARTICLE II – GENERAL DEFINITIONS

2-1 Interpretation – When not inconsistent with the context, words used in the present tense include the future, words used in the singular number include the plural number, and words used in the plural number include the singular. The word “shall” is always mandatory. Words, terms or expressions not defined herein shall be interpreted in the manner of their commonly accepted meaning.

2-2 Board of Health – Shall mean the Board approved by the Ingham County Board of Commissioners to sit as a “Board of Health”; may generally refer to the Ingham County Health Department.

2-3 Health Department – Shall mean the Ingham County Health Department, and may be referred to herein this regulation as the “Department”.

2-4 Health Officer – Shall mean the Administrative Director of the Ingham County Health Department, and/or his or her authorized representatives.

2-5 Person – Shall mean an individual, partnership, cooperative, association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

2-6 Tobacco – Shall mean any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other personal use including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

2-7 Tobacco Retailer – Shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco are made to purchasers for consumption or use.

2-8 Vending Machine – Shall mean any automated, self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses cigarettes or other tobacco products.

2-9 Vending Machine Location – Shall mean the room, enclosure, space or area where a tobacco vending machine is installed and operated.

ARTICLE III – PROHIBITION OF TOBACCO SALES

3-1 Prohibition of Tobacco Sales to Minors –

As of the effective date of this regulation, it shall be unlawful for a person to sell or attempt to sell or deliver tobacco to an individual under eighteen (18) years of age, and it shall be unlawful for a person under eighteen (18) years of age to purchase or attempt to purchase any tobacco product.

3-2 Signs Required – Signs informing the public of the age restrictions provided for herein shall be posted by every retailer at or near every display of tobacco products, at the point of sale and on or upon every vending machine which offers tobacco products for sale. Each such sign shall be plainly visible and shall meet the requirements of the Michigan Youth Tobacco Act, 1915 P.A. 31, as amended.

3-3 Identification Required – As of the effective date of this regulation, it shall be unlawful for a tobacco retailer to sell or permit to be sold tobacco to any individual without requesting and examining identification from the purchaser positively establishing the purchaser's age of eighteen (18) years or greater unless the seller has some other conclusive basis for determining the buyer is over the age of eighteen (18) years. In the event the seller does not request and examine identification from the purchaser, the seller shall be deemed to have not had “a conclusive basis” under this section if the purchaser is in fact a minor. Identification shall be by means of an officially issued card accepted as proof of age in the State of Michigan.

ARTICLE IV – LICENSE REQUIRED

4-1 License Required – As of the effective date of this regulation, it shall be unlawful for any person in Ingham County to sell tobacco unless that person possesses a valid tobacco retailer's license or vending machine license from the Ingham County Health Department for each location where tobacco sales are conducted. The license shall be good for a one year term if the licensee complies with the provisions of this regulation.

4-2 License Application and Issuance – Application for a tobacco retailer's or vending machine license shall be submitted in the name of the person proposing to conduct such sales of tobacco and shall be signed by such person or his agent.

All applications shall be submitted on a form supplied by the Ingham County Health Department and accompanied by the required license fee.

The application form shall contain at least the following information:

- (1) The business name, address, and telephone number of the establishment where tobacco is sold.
- (2) The name, home address, and home telephone number of the applicant if the applicant is an individual.
- (3) The name, address, and telephone number of the corporate office, if applicable.

4-3 License Fee

(1) The license fee shall be established by the Ingham County Board of Commissioners according to the Michigan Public Health Code, 1978 P.A. 368, as amended. Fees may be adjusted from time to time by the Ingham County Board of Commissioners.

Any revenue generated through license fees authorized here shall be used for licensing, enforcement, dissemination of information concerning the requirements of this regulation, and for tobacco control programs.

(2) In the event the applicant for a tobacco retailer's license can establish that he or she is in possession of a valid tobacco retailer's license issued under a duly adopted ordinance of a Township or Municipality within the County of Ingham for the same address, or for the same vending machine for which the applicant is seeking a County vending machine license, the County shall issue a license, and the applicant shall pay to the County the difference between the annual cost of the municipal license fee and the County license fee.

4-4 Non-Transferability – A tobacco retailer's or vending machine license is non-transferable, except, if a tobacco retailer changes address or a vending machine is moved, a new license will be issued for the new address upon receipt of an application for change of address. The license will retain the same expiration date as that previously issued and no additional fee will be charged.

4-5 License Display – A current tobacco retailer's license shall be displayed in a conspicuous place in each location where tobacco sales are conducted.

ARTICLE V – VENDING MACHINES

5-1 Vending Machines – Except as provided in this article, no person shall sell cigarettes or tobacco products through a vending machine.

5-2 Supervised Establishments – A vending machine may be operated in an establishment if fully located within the premises, no less than twenty (20) feet from all exits, and is under the direct supervision of the tobacco retailer or his/her adult employee through either:

(1) direct visual supervision of the tobacco retailer or his/her adult employee, or

(2) the vending machine can only be operated by a functioning remote control device, which is inaccessible to the purchaser and is not capable of being locked into an "on" position, and is operated for each sale by the tobacco retailer or his/her adult employee.

ARTICLE VI – CERTAIN FREE DISTRIBUTIONS PROHIBITED

6-1 Certain Free Distributions Prohibited – No person shall deliver cigarettes or tobacco products to any other person at no cost or at nominal cost for product promotional purposes without obtaining a temporary permit for such distribution. Applications for temporary permits shall be submitted to the Health Officer at least thirty (30) days prior to the event. The Health Officer shall grant a temporary permit when the tobacco products shall be distributed in an area in which persons under eighteen (18) years of age are denied admission, and in such other cases where the place of distribution reasonably assures distribution of tobacco products to adults only. In no case, shall any tobacco product be provided at no cost or nominal cost to any person under eighteen (18) years of age.

ARTICLE VII – ENFORCEMENT

7-1 Schedule of Monetary Civil Penalties

(1) Any licensed tobacco retailer who violates any provision of this Regulation shall be assessed a monetary civil penalty of One Hundred Dollars (\$100.00) for the first violation; Two Hundred Seventy Dollars (\$270.00) for a second violation; and Five Hundred Forty Dollars (\$540.00) for a third violation; and One Thousand Eighty Dollars (\$1,080.00) for fourth and subsequent violations.

(a) Any employee or agent of a tobacco retailer who violates any provision of this regulation shall be assessed a monetary civil penalty of Fifty Dollars (\$50.00) for the first violation; One Hundred Dollars (\$100.00) for a second violation; and Two Hundred Dollars (\$200.00) for a third and subsequent violations.

(b) An employee or agent of a tobacco retailer who violates any provision of this regulation as a first violation may participate in a tobacco control educational program provided by the Ingham County Health Department within ninety (90) days of the violation in lieu of the monetary civil penalty.

(c) Any person under eighteen (18) years of age who purchases, or attempts to purchase, any tobacco product shall be assessed a monetary civil penalty of Fifty Dollars (\$50.00) for the first violation; One Hundred Dollars (\$100.00) for a second violation; and Two Hundred Dollars (\$200.00) for a third and subsequent violations.

(2) Any person who sells tobacco without a valid tobacco retailer's license may be assessed a monetary

civil penalty of Two Hundred Dollars (\$200.00) for each day that a violation occurs.

(3) Any person who shall deliver cigarettes or tobacco products to any other person at no cost or at a nominal cost for product promotional purposes in violation of this Regulation shall be assessed a monetary civil penalty of Two Hundred Dollars (\$200.00) for each day that a violation occurs.

(4) Within twenty (20) days after receipt of a citation, the alleged violator may appeal the citation as provided in Section 2462 of the Michigan Public Health Code, 1978 P.A. 368. Further appeals, as provided by statute, may be to the Ingham County Board of Health, or a committee thereof.

(5) Each day that a violation continues shall be deemed as a separate violation.

7-2 Violations, Misdemeanor

(1) When, at the discretion of the Health Officer, the penalty provided in section 7-1 of this Regulation is not effective in enforcing this Regulation, the Health Officer and his/her designees are hereby authorized to issue appearance tickets with respect to violations of a provision of this Regulation, if those individuals had reasonable cause to believe that the person has committed an offense in violation of this Regulation.

(2) A person who violates this regulation is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than Two Hundred Dollars (\$200.00), or both.

(3) Each day a violation continues shall be deemed as a separate offense.

7-3 License Suspension and Revocation – A

tobacco retailer's license may be suspended or revoked by the Health Officer for cause if the licensee fails to comply with the provisions of this regulation. These sanctions are in addition to the monetary penalties provided for in Section 7-1 of this regulation. A license may be suspended or revoked as follows:

(1) In the case of a first and single violation of this regulation, the licensee shall be given notification, in writing, of provisions for license suspension or revocation in the event of additional or further violations; and

(2) In the case of two (2) violations within any three-year period, the license may be suspended for thirty (30) days; and

(3) In the case of three (3) violations within any three-year period, the license may be suspended for ninety (90) days; and

(4) In the case of four (4) violations within any three-year period, the license may be revoked for one year.

(5) Each sale of tobacco to a minor shall constitute a separate violation.

(6) Decisions of the Health Officer may be appealed to the Board of Health. Such appeal shall be filed within ten (10) days after the order is served on the licensee. An appeal shall stay all proceedings until a final decision by the Board of Health.

ARTICLE VIII – INJUNCTIVE PROCEEDINGS

8-1 Injunctive Proceedings – Notwithstanding the existence and pursuit of any other remedy, the Health Officer or his/her designee, without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent a violation of this regulation.