

# **Dutchess County Sanitary Code**

## **Article 25**

### **TOBACCO, CIGARETTE, AND CIGARETTE-LIKE PRODUCTS**

#### **Section 25.1 Statement & Scope**

The Dutchess County Board of Health does hereby amend and enact the Dutchess County Sanitary Code as follows, herein.

WHEREAS, the prevention of adolescent tobacco product use is detailed in Article 13-F of the Public Health Law of the State of New York, known as the Adolescent Tobacco-Use Prevention Act (ATUPA), which expressly prohibits the sale of tobacco products or herbal cigarettes, rolling papers or pipes to minors; and

WHEREAS, the Commissioner of Health of Dutchess County has the duty to enforce the provisions of ATUPA and the Dutchess County Board of Health encourages the Commissioner to utilize his/her time to reduce the prevalence of tobacco use and addiction as well as tobacco smoke exposure in Dutchess County; and

WHEREAS, the Dutchess County Board of Health promulgates the Sanitary Code which the Commissioner also has the duty to enforce; and

WHEREAS, the Dutchess County Board of Health desires the Commissioner to effectively and efficiently enforce ATUPA by limiting and preventing access to tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product by persons under eighteen years of age, and prohibit the sale of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product to said persons; and

WHEREAS, the number of adolescent tobacco users nationwide has recently been demonstrated statistically to be increasing in the United States as detailed in the Morbidity and Mortality Weekly Report (November 18, 1994, Vol. 43, No. SS-3) of the Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services; and

WHEREAS, based on the United States Surgeon General's 1994 Report, that most persons under the age of 18 who use tobacco products are addicted to nicotine and are thus compelled, to a degree, to attempt to purchase more tobacco products, participating in an illegal act; and

WHEREAS, the U.S. Food and Drug Administration reports that electronic cigarettes, which may contain nicotine, could increase nicotine addiction and tobacco use in young people; and

WHEREAS, a local permit requirement is necessary to more systematically monitor compliance with ATUPA to ensure that dealers of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products are thoroughly educated about their responsibilities under ATUPA and to ensure that an educational sign regarding the health risks of using tobacco products, produced by the Dutchess County Department of Health, is properly placed; and

WHEREAS, in-store monitoring measures are necessary to maximize store owner accountability and to minimize distribution of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products to minors with or without charge; and

WHEREAS, the Dutchess County Board of Health finds and believes, after careful study and deliberation, that Dutchess County has a substantial and important interest in reducing the incidence of illegal acts relating to the sale of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products to persons under the age of 18; and

WHEREAS, the New York State Legislature has found that “there is a substantial body of scientific research showing that breathing secondhand smoke is a significant health hazard for non-smokers,” and the Dutchess County Board of Health seeks to protect the health of all of the residents of Dutchess County, including those under 18 years of age; and

WHEREAS, a recent survey done by the Dutchess County Department of Health revealed that over 55% of local high school students have used tobacco products, of which 57% first tried tobacco products before the age of 14 and over 92% first tried tobacco products before the age of 16.

## **Section 25.2 Definitions**

- A) The term “Permit Issuing Official” shall mean the Dutchess County Commissioner of Health or the appointed designee.
- B) Other definitions found in the New York State Tax Law Section 470 and New York State Public Health Law, Article 13-E and Article 13-F Section 1399-aa are hereby incorporated as definitions applicable to this Article of the Dutchess County Sanitary Code.
- C) The term “Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products” means the owner or operator of any establishment or facility where the sale and/or distribution of tobacco products or

- herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products occurs, including vending machines.
- D) ATUPA shall mean the New York State Adolescent Tobacco-Use Prevention Act.
- E) “Possess” means to have physical possession or otherwise to exercise dominion or control over tangible property.
- F) The term “cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains: (a) any roll of tobacco wrapped in any substance not containing tobacco, or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this definition. The term “cigarette” includes “roll-your-own” (i.e., any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”
- G) The term “cigarette-like product” means any modified or nonconventional product that resembles a cigarette but may not contain tobacco and/or may contain lower levels of nicotine or tar. “Cigarette-like product” shall not include a smoking cessation medication expressly approved by the U.S. Food and Drug Administration which is being used as part of a smoking cessation program.
- H) The term “electronic cigarette”, also known as “e-cigarette”, means any battery-powered device, which generally contains cartridges that may or may not be filled with nicotine in addition to flavoring and other chemicals, that provides inhaled doses of nicotine or other potentially harmful chemicals by delivering vaporized liquid solution to the user.
- I) The term “herbal cigarette” means any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a cigarette, cigar or pipe filler.
- J) The term “herb” means any smokable plant product.
- K) The term “tobacco products” means one or more cigarettes or cigars, chewing tobacco, powdered tobacco or any other tobacco products.
- L) “School grounds” means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line

of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an “area accessible to the public” shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

M) The term “private club” means an organization with no more than an insignificant portion of its membership comprised of people under the age of eighteen years that regularly receives dues and/or payments from its members for the use of space, facilities and services.

## **Section 25.3 Permit Required**

A) Every dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product in Dutchess County shall possess a valid Permit issued by the permit-issuing official for each location and/or event at which tobacco product, herbal cigarette, electronic cigarette, or any cigarette or cigarette-like product sales or distribution occurs. Private clubs are exempted from this Section and all other provisions of this Article.

B) Not less than 21 days before starting operation as a dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products, an application for a permit is to be submitted to the permit-issuing official. This application is to be completed in full on forms acceptable to the permit-issuing official. The application shall be accompanied by the prevailing fee.

C) Each Permit issued will expire two (2) years from the date of issuance, except as otherwise stipulated on the Permit. The Permit shall be phased in over a 12 month period with a staggered system in order to facilitate efficient renewals.

D) An application, completed in full, for renewal of a permit shall be made at least thirty (30) days prior to expiration of the current permit on forms acceptable to the permit-issuing official. An application for a renewal permit shall be accompanied by payment of the prevailing fee.

E) The Department may withhold, suspend, or revoke a Permit if it finds that:

- 1) the information submitted in the application is incorrect or incomplete; or
- 2) the fee for application and/or the Permit has not been paid as required; or
- 3) the applying Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product is not in compliance with all provisions of the New York State Tax Law Article 20 and the New York State Public Health Law Article 13-F; or
- 4) the applying Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product has not signed and returned the “Statement of Understanding and Responsibility of the New York State ATUPA Law” with the permit application.

## **Section 25.4 Standards and Requirements**

- A) Any Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product shall comply with all provisions of the New York State Tax Law Article 20 and New York State Public Health Law Article 13-F.
- B) A valid Permit must be posted in a manner conspicuous to the public by the Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product at each location where tobacco product, herbal cigarette, electronic cigarette, or any cigarette or cigarette-like product sales or distribution occurs.
- C) In addition to the requirements of the ATUPA regulations, every dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product in Dutchess County shall conspicuously place a sign produced and supplied by the Dutchess County Department of Health stating “Tobacco Use Harms You and Loved Ones Now. It may Kill You Later”, or other sign approved by the Commissioner of Health.

## **Section 25.5 Violations, Enforcement, and Penalties**

- A) Selling, or the offering for sale, tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product without a valid and appropriately displayed permit constitutes a violation of this Article.
- B) Any Dealer of tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like products who is found not to be in compliance with all of the provisions of this Article and the New York State Public Health Law, in addition to any penalties under New York State Law, will also have their Dutchess County Permit suspended for a period of 48 hours after an administrative hearing has determined non-compliance. Tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product may not be sold or offered for sale while a permit is in suspension. Additionally, a sign shall be placed at the entrance of the business by the Department stating, “This business sold a tobacco product, herbal cigarette, electronic cigarette, or other cigarette product to someone under 18 years of age and may not sell these products on \_\_\_\_ and \_\_\_\_.” (specified date and time)

## **Section 25.6 School Reporting**

- A) Each school district, each school year, shall file with the Dutchess County Department of Health a written policy and procedure which will effect compliance with Article 13E, Public Health Law, and this Article. The policy and procedure shall be filed no later than the last day of September and shall include but not be limited to the following:

1. Name, business address and phone number of the school district Superintendent.
2. Name, business address and phone number of the school district designated enforcement officer for each school.
3. Procedure and method for providing training and educational material each school year to the school employees and students dealing with the requirements of Article 13E, Public Health Law, State of New York, and Article 25, Section 25.1, 25.6, 25.7, Dutchess County Sanitary Code.
4. School district administrative process for enforcement of Article 13E and Article 25 to include but not be limited to the following:
  - a. Written documentation for each incident (violation) on a form provided by and/or approved by the Dutchess County Commissioner of Health or the appointed designee. Said form is to be kept on file by the school until the offender is no longer enrolled in the school district.
  - b. Procedures for and method of discipline and notification to the parent and/or legal guardian.
  - c. Procedure for referral to the Dutchess County Department of Health for enforcement after the third incident (violation) has occurred during the school year.

B) Every middle and high school shall file with the Dutchess County Department of Health a report, two times each school year, on the violations of Article 13E, Section 1399-o, Public Health Law, and this Article, which occurred on school grounds. The report periods shall be September 1 to January 31, and February 1 to August 31, and shall include but not be limited to the following:

1. Number of persons who committed a violation.
2. Number of separate violations for each person reported in Item 1.
3. Sex and age of each violator.
4. Location of each violation.
5. Type of violation (smoking or possession)
6. Type of tobacco product

## **Section 25.7 Possession and Use**

Smoking shall not be permitted and no person shall use tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product on school grounds when school is in session, as well as during non-school hours. No one under 18 years of age shall be permitted to possess tobacco products, herbal cigarettes, electronic cigarettes, or any cigarette or cigarette-like product on school grounds when school is in session.

## **Section 25.8 Severability**

If any clause, sentence, paragraph, subdivision, section, or part of this regulation or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order of judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this regulation, or its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order of judgment shall be rendered.

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