**Regulation of the [city/town] Board of Health**

**Prohibiting the Self-Service Display of Candy**

1. **Statement of Purpose:**

Whereas, overweight and obesity in the United States has been described as a public health epidemic estimated to kill more than 350,000 people per year;[[1]](#footnote-1)

Whereas, nearly two-thirds of American adults aged 20 or older are either overweight or obese,[[2]](#footnote-2) with obesity being a risk factor for diseases such as diabetes, stroke, heart disease, high blood pressure, and certain cancers;[[3]](#footnote-3)

Whereas, children who become obese are more likely to be obese adults, and obesity in children may predispose those children to adult diseases;[[4]](#footnote-4)

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”[[5]](#footnote-5).

Now, therefore it is the intention of the **[city/town]** Board of Health to regulate self-service displays of candy.

B. **Authority:**

This regulation is promulgated pursuant to the authority granted to the **[city/town]** Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

C. **Definitions:**

For the purpose of this regulation, the following words shall have the following meanings:

Candy: A preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Self-Service Display: Any display from which customers may select candy, as defined herein, without assistance from an employee or store personnel.

D**. Candy Sales**

All retail sales of candy, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. **Self-Service Displays:**

All self-service displays of candy, as defined herein, are prohibited.

F. **Violations:**

1. It shall be the responsibility of the establishment, food service permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars ($100.00).
2. In the case of a second violation within 24 months of the date of the current violation, a fine of two hundred dollars ($200.00).
3. In the case of three or more violations within a 24 month period, a fine of three hundred dollars ($300.00).

G. **Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

H. **Separate Violations:** Each day any violation exists shall be deemed to be a separate offense.

I. **Enforcement:**

Enforcement of this regulation shall be by the **[city/town]** Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the **[city/town]** Board of Health or its designated agent(s) and the Board shall investigate.

J. **Severability:**

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

K. **Effective Date:**

This regulation shall take effect on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016.

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1. Mokdad AH, Marks JS, Stroup DF, Gerberding JL. Actual causes of death in the United States, 2000, JAMA 2005; 293(3); 293. [↑](#footnote-ref-1)
2. Hedley AA, Ogden CL, Johnson CL, Carrol MD, Curtin LR, Flegal KM. Prevalence of overweight and obesity among US children, adolescents and adults, 1999-2002, *JAMA* 2004;291(23):2847-2850. [↑](#footnote-ref-2)
3. Visscher TL, Seidell JC. The public health impact of obesity. *Annual Review of Public Health* 2001;22:355-75; Flegal KM, Carroll MD, Ogden CL, Johnson DL. Prevalence and trends in obesity among US adults, 1999-2000. *JAMA* 2002;288(14):1723-1727. [↑](#footnote-ref-3)
4. Hill JO, Trowbridge FL. Childhood obesity: future directions and research priorities, *Pediatrics* 1998;101:S570-S574. [↑](#footnote-ref-4)
5. Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949). [↑](#footnote-ref-5)