

TOWN of NORTH ATTLEBORO • BOARD of HEALTH

**Nicotine Delivery Product and E-Cigarette**  
**Regulation**

Effective July 13, 2010

**Section I. PURPOSE**

**WHEREAS:**

- The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, and;
- The U.S. Food and Drug Administration has conducted laboratory tests finding e-cigarettes contain toxic chemicals and carcinogens, and;
- The appeal created by e-cigarettes, which contain addictive nicotine, can lead minors into a nicotine addiction that may result in their daily use of tobacco, and;
- E-cigarettes seriously compromise current laws governing indoor smoking bans including, but not limited to, the Smoke-Free Workplace Law (M.G.L. c.270, §22) and the Education Reform Act (M.G.L. c.71 §§2A & 37H), and;
- The Town of North Attleboro wants to protect its youth against the use of an untested nicotine product and its residents against the involuntary exposure of vapors from this untested nicotine product.

**NOW THEREFORE**, this Board of Health adopts the following regulation under the authority specified in Section II herein, as a preventative public health measure to curtail the access and use of Nicotine Delivery Products and e-cigarettes in the town of North Attleboro.

**Section II. AUTHORITY**

This regulation is promulgated pursuant to the authority granted to the North Attleboro Board of Health by the Massachusetts General Laws Chapter 111, Section 31 that it "may make reasonable health regulations" to protect the public health of this community.

**Section III. DEFINITIONS:**

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

Board of Health or Board: The North Attleboro Board of Health, including its officers or agents.

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.

E-Cigarette: Any electronic device 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.

Employee: Any individual who performs services for an employer.

Liquid Nicotine: (also known as “nicotine solution”) Any product composed either in whole, or in part, of nicotine and manufactured for use with e-cigarettes.

Minor: Any individual who is under the age of eighteen (18).

Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose, including but not limited to, E-Cigarettes.

Permit: The license granted by the Board of Health to sell or distribute Nicotine Delivery Products.

Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of Nicotine Delivery Products or E-Cigarettes directly to consumers.

Town: The Town of North Attleboro and its authorized agents.

#### **Section IV. SALES TO MINORS PROHIBITED**

A. No Person shall sell Nicotine Delivery Products, E-Cigarettes or Liquid Nicotine or allow Nicotine Delivery Products, E-Cigarettes or Liquid Nicotine to be sold to a Minor or give Nicotine Delivery Products, E-Cigarettes or Liquid Nicotine to a Minor.

B. Identification: Each Person selling or distributing Nicotine Delivery Products or E-Cigarettes by Permit shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any Person under the age of 27.

C. All retail sales of Nicotine Delivery Products or E-Cigarettes must be face-to-face between a seller who shall be licensed to sell or distribute the devices by the Board of Health, and the buyer. The sale or distribution of Nicotine Delivery Products by vending machine or self-service display is prohibited.

D. Permit Required. A Nicotine Delivery Product Permit is required for any retailer who sells Nicotine Delivery Products in North Attleboro.

1. No person shall sell or otherwise distribute Nicotine Delivery Products at retail within the Town without first obtaining a Nicotine Delivery Product sales permit issued annually by the Board. Only owners of establishments with a permanent, non-mobile location in the Town are eligible to apply for a permit and sell Nicotine Delivery Products at a specified location in North Attleboro.
2. As part of the Nicotine Delivery Product sales permit application process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for Nicotine Delivery Product sales regarding any applicable state laws regarding the sale of Nicotine Delivery Products and this regulation.
3. The fee for a Nicotine Delivery Product sales permit shall be determined annually by the Board. All such permits shall expire annually on January 31<sup>st</sup> and must be renewed annually.

4. A separate permit is required for each retail establishment selling Nicotine Delivery Products.
5. Each Nicotine Delivery Product sales permit shall be displayed at the retail establishment in a conspicuous place.
6. No Nicotine Delivery Product sales permit holder shall allow any employee to sell Nicotine Delivery Products until such employee reads this regulation and any state laws regarding the sale of Nicotine Delivery Products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
7. A Nicotine Delivery Product sales permit is non-transferable. A new owner of an establishment that sells Nicotine Delivery Products must apply for a new Nicotine Delivery Product sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
8. Issuance of a Nicotine Delivery Product sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
9. A Nicotine Delivery Product sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

#### **Section V. DISTRIBUTION/SAMPLING PROHIBITED**

No Person shall distribute, or cause to be distributed, any free samples of Nicotine Delivery Products or E-Cigarettes. No Person shall permit any sampling of a Nicotine Delivery Product or an E-Cigarette.

#### **Section VI. USE PROHIBITED**

The use of E-Cigarettes is hereby prohibited in all locations and establishments in Town covered by M.G.L. c.270, §22 (commonly known as the "Smoke-free Workplace Law").

#### **Section VII. SIGNAGE**

The Permit holder or other Business Agent in charge of a shop or other place used to sell Nicotine Delivery Products or E-Cigarettes at retail shall conspicuously post one or more signs stating that "The sale of Nicotine Delivery Products or E-Cigarettes to minors under 18 years of age is prohibited." *and* "The use of E-Cigarettes at in all locations and establishments in the Town covered by M.G.L. c.270, §22 is prohibited." Such notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. Such notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

#### **Section VIII. VIOLATIONS**

##### **A. Violations of Section IV:**

1. It shall be the responsibility of the Permit holder, or his/her operator or Business Agent, to ensure compliance with Section IV of this regulation pertaining to the sale and distribution of Nicotine Delivery Products, E-Cigarettes or Liquid Nicotine. In addition to the suspension, revocation and penalty provisions of the Permit Policy of the Board effective July 1, 2008 and Article XXI,

Section 3 of the Town Bylaws, violators of this regulation may also receive the following penalties:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00)
  - b. In the case of a second violation within twelve (12) months of the date of the current violation, a fine of two hundred dollars (\$200.00)
  - c. In the case of three or more violations within a twelve (12) month period, a fine of three hundred dollars (\$300.00).
2. In addition to the monetary penalties set above, any Nicotine Delivery Product Permit holder who engages in the sale or distribution of products whose sale is under suspension to a consumer while his/her Permit is suspended shall be subject to the suspension of his/her Board-issued tobacco and Nicotine Delivery Product Permits for thirty (30) consecutive business days.

B. Violations of Section V:

1. It shall be the responsibility of the Permit holder, or his/her operator or Business Agent, to ensure compliance with Section V of this regulation pertaining to the free distribution and sampling of Nicotine Delivery Products or E-Cigarettes. In addition to the suspension, revocation and penalty provisions of the Permit Policy of the Board effective July 1, 2008 and Article XXI, Section 3 of the Town Bylaws, violators of this regulation may also receive the following penalties:
  - a. In the case of a first violation, a fine of one hundred dollars (\$100.00)
  - b. In the case of a second violation within twelve (12) months of the date of the current violation, a fine of two hundred dollars (\$200.00)
  - c. In the case of three or more violations within a twelve (12) month period, a fine of three hundred dollars (\$300.00)

C. Violations of Section VI:

1. It shall be the responsibility of the owner, manager, or other Person in control of a building, vehicle or vessel to ensure compliance with Section VI of this regulation pertaining to the use of E-Cigarettes. In addition to the suspension, revocation and penalty provisions of the Permit Policy of the Board effective July 1, 2008 and Article XX1, Section 3 of the Town Bylaws, violators of this regulation may also receive the following penalties:
  - a. One hundred dollars (\$100) for the first violation
  - b. Two hundred dollars (\$200) for a second violation occurring within two (2) years of the date of the first offense
  - c. Three hundred dollars (\$300) for a third or subsequent violation occurring within two (2) years of the second violation
  - d. If an owner, manager or other Person in control of a building, vehicle or vessel demonstrates repeated noncompliance by violating this regulation, the Board may revoke or suspend his/her E-Cigarette permit to operate consistent with the Permit Policy of the Board, effective July 1, 2008.
2. An individual or Person who violates Section VII by using an E-Cigarette in a place where smoking is prohibited shall be subject to a penalty of one hundred dollars (\$100.00).

- D. The Board shall provide notice of the intent to suspend or revoke any Board-issued Permit or license consistent with the Permit Policy of the Board, effective July 1, 2008. For purposes of any such suspension for violation(s) of this regulation, violators who may also hold a tobacco sales Permit from the Board shall remove all tobacco products from the premises of his/her retail establishment for the duration of said suspension. Failure to remove all tobacco products as such shall constitute a separate violation of this regulation.

**Section IX. PENALTIES**

- A. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Section 21D of Chapter 40 of the Massachusetts General Laws and Sections 2 and 3 of Article XXI of the Town Bylaws, or by a criminal complaint that may be brought through Attleboro District Court.
- B. Each calendar day on which a violation occurs shall be considered a separate offense.

**Section X. ENFORCEMENT**

- A. This regulation shall be enforced by the Board and its officers, agents or designees.
- B. Any Person may register a complaint with the Board to initiate an investigation and/or enforcement pursuant to this regulation.

**Section XI. SEVERABILITY**

If any provision contained in this regulation is deemed invalid for any reason, it shall be severed and shall not affect the validity of the remaining provisions.

**Section XII. EFFECTIVE DATE:**

This regulation was adopted by the Board of Health at its legally posted meeting of July 13, 2010 to be effective as of July 13, 2010.

**By the North Attleboro Board of Health:**

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Donald M. Bates, Chairman

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John J. Donohue, Jr., Member

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Jonathan D. Maslen, Member