

TOWN of NORTH ATTLEBORO • BOARD of HEALTH

Regulation of Youth Access to Tobacco Products

Effective January 1, 2012

Section I. PURPOSE

WHEREAS:

- Conclusive evidence exists that tobacco causes cancer, respirator and cardiac diseases, negative birth outcomes and irritations to the eyes, nose and throat, and;
- More than eighty percent of all smokers begin smoking before the age of eighteen years, and;
- Nationally in 2000, sixty-nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes, and;
- The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, and;
- Access by minors to tobacco and nicotine delivery products remains a major problem;

NOW THEREFORE, this Board of Health adopts the following regulation under the authority specified in Section II herein, to regulate youth access to tobacco products 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.

Department or MDPH: The Massachusetts Department of Public Health.

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.

Definitions – Continued

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Town of North Attleboro or any agency thereof, which uses the services of one (1) or more employees.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00. Health care institutions include, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

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 and liquid nicotine.

Permit: The license granted by the Board of Health to sell or distribute tobacco or nicotine delivery products.

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit from the Board of Health or any person who is required to apply for a tobacco sales permit pursuant to this regulation, or his or her business agent.

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 Tobacco or Nicotine Delivery Products directly to consumers.

Self Service Display: Any display from which customers may select a tobacco or a nicotine delivery product without assistance from an employee or store personnel, excluding vending machines.

Tobacco or Tobacco Product: Tobacco in any of its forms including, but not limited to, cigarettes, cigars, chewing tobacco, pipe tobacco, bidis and snuff.

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes, any other tobacco or nicotine delivery product.

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

Section IV. SALES TO MINORS PROHIBITED

A. No Person shall sell Tobacco or Nicotine Delivery Products or allow Tobacco or Nicotine Delivery Products to be sold to a Minor; or not being the Minor's parent or legal guardian, give Tobacco or Nicotine Delivery Products to a Minor.

B. Required Signage

- (a) In conformance with and in addition to M.G.L. c.270, §7, a copy of M.G.L. c. 270, §6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by MDPH and made available through the Board. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice 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. The owner or other person in charge of a shop or other place used to sell Tobacco or Nicotine Delivery Products at retail shall conspicuously post any additional signs required by MDPH.
- (b) The owner or other person in charge of a shop or other place used to sell Tobacco or Nicotine Delivery Products at retail shall conspicuously post signage provided by the Board that discloses current referral information about smoking cessation.
- (c) In conformance with the Nicotine Delivery and E-Cigarette Regulation effective July 13, 2010 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 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

C. Identification: Each Person selling or distributing Tobacco or Nicotine Delivery Products 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.

D. All retail sales of Tobacco or Nicotine Delivery Products 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.

E. Permit Required. A Tobacco sales or Nicotine Delivery Product Permit issued by the Board is required for any retailer who sells Tobacco or Nicotine Delivery Products respectively in this Town.

Sales to Minors Prohibited – Continued

1. No person shall sell or otherwise distribute Tobacco or Nicotine Delivery Products at retail within the Town without first obtaining a Tobacco or 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 Tobacco or Nicotine Delivery Products at a specified location in North Attleboro.
2. As part of the Tobacco or 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 this regulation and that the applicant is responsible for instructing any and all employees who will be responsible for Tobacco or Nicotine Delivery Product sales regarding any applicable state laws regarding the sale of Tobacco or Nicotine Delivery Products and this regulation.
3. The fee for a Tobacco or Nicotine Delivery Product sales Permit shall be determined annually by the Board. All such Permits shall expire annually on January 31st and must be renewed annually.
4. Each applicant who sells Tobacco Products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue before a Tobacco sales Permit can be issued.
5. A separate Permit is required for each retail establishment selling Tobacco or Nicotine Delivery Products.
6. Each Nicotine Delivery Product sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco or Nicotine Delivery Product sales Permit Holder shall allow any employee to sell Tobacco or Nicotine Delivery Products until such employee reads this regulation and any state laws regarding the sale of Tobacco or 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 this regulation and applicable state laws.
8. Tobacco and Nicotine Delivery Product sales Permits are non-transferable. A new owner of an establishment that sells Tobacco or Nicotine Delivery Products must apply for a new Tobacco or Nicotine Delivery Product sales Permit from the Board. No new Permit will be issued unless and until all outstanding penalties incurred by the previous Permit Holder are satisfied in full.
9. Issuance of a Tobacco or 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.
10. Tobacco or Nicotine Delivery Product sales Permits 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 Tobacco or Nicotine Delivery Products. No Person shall permit any sampling of a Tobacco or Nicotine Delivery Product.

Section VI. OUT-OF-PACKAGE SALES

No Person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

Section VII. SELF SERVICE DISPLAYS

Except for self-service displays that are located in establishments where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time, all self-service displays of Tobacco or Nicotine Delivery Products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

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 VIII. VENDING MACHINES

All Tobacco and/or Nicotine Delivery Product vending machines are prohibited

Section IX. PROHIBITION of the SALE of TOBACCO and NICOTINE DELIVERY PRODUCTS by HEALTH CARE INSTITUTIONS

No Health Care Institution located in this Town shall sell or cause to be sold Tobacco or Nicotine Delivery Products. No retail establishment that operates or has a Health Care Institution within it, such as a pharmacy or drug store, shall sell or cause to be sold Tobacco or Nicotine Delivery Products.

Section X. VIOLATIONS

A. It shall be the responsibility of the Permit Holder, or his/her operator or Business Agent, to ensure compliance with this regulation pertaining to the sale, distribution and/or sampling of Tobacco and Nicotine Delivery Products. 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:

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 twelve (12) months of the date of the current violation, a fine of two hundred dollars (\$200.00)

Violations – Continued

3. In the case of three or more violations within a twelve (12) month period, a fine of three hundred dollars (\$300.00).

B. In addition to the monetary penalties set above, any Tobacco sales or 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 both his/her Tobacco and Nicotine Delivery Product Permits for thirty (30) consecutive business days.

C. If the Board finds that an establishment has made two or more sales of either Tobacco or Nicotine Delivery Products to a Minor within any twelve (12) month period, it shall provide the Permit Holder with notice of its intent to suspend or revoke its Tobacco sales and/or Nicotine Delivery Products Permit 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 hold both Tobacco and Nicotine Delivery Product Permits from this Board shall be required to remove all Tobacco and Nicotine Delivery Products from the premises of his/her retail establishment for the duration of any such suspension. Failure to remove all such Tobacco and Nicotine Delivery Products shall constitute a separate violation of this regulation.

D. If a Permit Holder, or his/her operator or Business Agent refuse to cooperate with inspections pursuant to this regulation, the Permit Holder's Tobacco and/or Nicotine Delivery Product Sales Permits shall be suspended for thirty (30) consecutive business days.

Section XI. 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 XII. 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 XIII. 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.

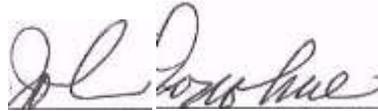
Section XIV. EFFECTIVE DATE:

This regulation was adopted by the Board of Health at its legally posted meeting of December 6, 2011, to be effective as of January 1, 2012.

By the North Attleboro Board of Health:



Donald M. Bates, Chairman



John J. Donohue, Jr., Member



Jonathan D. Maslen, Member