

**SALE OF TOBACCO/NICOTINE
PRODUCTS AND SMOKE
ACCESSORIES REGULATION**

Effective January 1, 2020

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ARTICLE I. PURPOSE and SCOPE:

WHEREAS there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹, and;

- Among the 18.1% of students nationwide who currently smoke cigarettes and are less than 18 years old, 14.1% usually obtain them by buying them in a store (i.e. convenience store, supermarket, or discount

store) or gas station, and among 11th grade males this rate was nearly 30 percent^{2,19}, and;

- The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin³ and the Surgeon General has found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,⁴ and that it is addiction to nicotine that keeps youth smoking past adolescence⁵, and;

- A Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers –spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive and that these companies were likely to continue targeting underage smokers⁶, and;

- More than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke⁷, and;

- The Institute of Medicine (IOM) has concluded that raising the minimum age of legal access to tobacco products to twenty-one (21) years old will reduce tobacco initiation, particularly among adolescents 15 to 17 years old, as well as improve health across the lifespan and save lives⁸, and;

- The sales of flavored little cigars increased by 23% between 2008 and 2010⁹ and many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single –dose, enjoy a relatively low tax as compared to cigarettes, are available in fruit, candy and alcohol flavors, and are popular among youth¹⁰, and;

- Although the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹¹ largely because these flavored products were marketed to youth and young adults,¹² and younger smokers were more likely to have tried these products than older smokers¹³, neither federal nor Massachusetts law currently restricts the sales of flavored non- cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices, nor the nicotine solutions used in these devices, and;

- The U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be –starter products that help establish smoking habits that can lead to long-term addiction, and;¹⁴

- The U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale¹⁵, and;

- The U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among

middle and high school students tripled from 2013 to 2014¹⁶, and;

- Nicotine solutions consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum¹⁷, and;

- The Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an acutely hazardous waste (310 CMR 30.136), and;

- In a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one¹⁸, and;

- According to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days was 10.8% in 2013¹⁹, and;

- Data from a National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes²⁰, and;

- In Massachusetts, youth use of cigars and smokeless tobacco (12.3%) was higher than the rate of cigarette use (10.7%) in 2013 and has remained elevated since 2009²¹, and;

- Research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and that a 10% increase in cigar prices would reduce use by 3.4%²², and;

- Data collected shows that 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1% of 12-17 year olds who smoked cigars reported smoking cigar brands that were flavored²³, and;

- The 2015 Massachusetts Youth Research shows that 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them²³, and;

- The Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking²⁴

- The sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermines efforts to educate patients on the safe and effective use of medication, including cessation medication, and;

- Educational institutions sell tobacco products to a younger population that is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational

institutions that educate a younger population about social, environmental and health risks and harms, and;

- 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"²⁶.

NOW THEREFORE, this Board of Health adopts the following regulation under its authority specified in Article XXIII herein, as a preventative public health measure intended to regulate the sale of tobacco products in the Town of North Attleborough.

ARTICLE II. AUTHORITY:

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

ARTICLE III. DEFINITIONS:

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

Adult-Only Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and/or smoke paraphernalia/accessories, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and that maintains a valid permit for the retail sale of tobacco products as required to be issued by the Board of Health.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

Board of Health or Board: The North Attleborough Board of Health and its authorized 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.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco/nicotine product or component part thereof, including, but not limited to, tastes or aromas relating to any menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco/nicotine product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter

64C, Section 1, Paragraph 1.

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco/nicotine product during the processing, manufacturing or packaging of the tobacco/nicotine product. Such term shall include a smoke constituent.

Coupon: Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

Department or MDPH: The Massachusetts Department of Public Health and its authorized agents.

E-Cigarette/Electronic Nicotine Delivery System: 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. This includes whether for 1-time use or reusable and shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Electronic Nicotine Delivery System flavor Enhancer/Flavored Electronic Nicotine Delivery System: means any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any electronic nicotine delivery system. This also means any electronic nicotine delivery system, or component part thereof that contains a constituent that has or produces a characterizing flavor.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

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 is subject to the provisions of 247 CMR 6.00. Health Care Institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine or Nicotine Solution: Any product composed either in whole, or in part, of nicotine and manufactured for use with e-cigarettes or other electronic devices.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Marijuana Accessories: Equipment, products, devices, or materials of any kind that are intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana Retailer: "Marijuana Retailer as defined in 935 CMR 500.002.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the Town of North Attleborough. The minimum legal sales age shall be **twenty-one (21) years old**.

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.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco/nicotine products who applies for and receives a tobacco/nicotine product sales permit or any person who is required to apply for a tobacco/nicotine product sales permit pursuant to these regulations, or his or her business agent.

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.

Registered Marijuana Dispensary: “Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary” as defined in 935 CMR 500.002.

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

Schools: Public or private elementary or secondary schools.

Smoke Accessories: Equipment, products, devices, or materials of any kind that are intended or designed for use in ingesting, inhaling, or otherwise introducing Tobacco Product, marijuana, tetrahydrocannabinol (THC), or cannabidiol (CBD) into the human body, including, but not limited to, Marijuana Accessories, bong, pipes, glass pipes, vaporizers, hookah apparatus, and dab rigs.

Smoke Constituent: Any chemical or chemical compound in mainstream or side stream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in either the retail sale of tobacco products for consumption by customers on the premises or providing a space for consumers to bring their own product to consume, and is prohibited by the Town of North Attleborough’s Workplace and Public Smoking Regulation effective December 11, 2018. Smoking bar shall include, but not be limited to, those establishments that are commonly known as cigar bars and hookah bars.

Tobacco or Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco and snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookahs, liquid nicotine, “e-liquids”, or other similar products, regardless of nicotine content, that rely on vaporization, heating, or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Tobacco Product Sales Permit or Permit: The license granted by the Board to sell or distribute tobacco products.

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

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

ARTICLE IV. TOBACCO SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE:

A. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age of **twenty-one (21) years old** in the Town of North Attleborough; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age of **twenty-one (21) years old**.

B. Required Signage:

1. In conformance with and in addition to Massachusetts General Law, Chapter 270, § 7, a copy of Massachusetts General Laws, Chapter 270, § 6 and 6A, 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 the Department and made available from this 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 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Department. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.06 (2) (e).
2. The owner or other person in charge of a shop, store or other place used to sell tobacco/nicotine products, as defined herein, at retail shall conspicuously post signage provided by the Board that discloses current referral information about smoking cessation.
3. The owner or other person in charge of a shop, store or other place used to sell tobacco/nicotine products, as defined herein, at retail shall conspicuously post one or more signs stating that –The sale of tobacco/nicotine products, including e-cigarettes, to someone under the minimum legal sales age of **21 years** is prohibited.¶ *and* –The use of E-Cigarettes at all locations and establishments covered by the Smokefree Workplace Law, M.G.L. c.270 §22 is prohibited.¶ Such notices shall be no smaller than 8.5 inches by 11 inches 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. 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.
4. Signage shall include health warnings associated with electronic nicotine delivery systems. The owner, Retailer, or other person in charge of a retail establishment shall conspicuously post any additional signs required by MDPH in a form and manner as required by MDPH.

C. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is **twenty-one (21) years old** or older. Verification is required for any person under the age of twenty-seven (27) years old.

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

ARTICLE V. TOBACCO/NICOTINE PRODUCT SALES PERMIT:

- A. No person shall sell or otherwise distribute tobacco/nicotine products, as defined herein, within North Attleborough without first obtaining a Tobacco/Nicotine Product Sales Permit issued annually by

this Board. Only owners of establishments with a permanent, non-mobile location in North Attleborough are eligible to apply for such a permit to sell tobacco products, as defined herein, at the specified location in North Attleborough.

- B. As part of the permit application process, the applicant must obtain and review this regulation. Upon submission of said application to the Board, each applicant will be required to sign a statement declaring that the applicant has read this regulation and will be responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
- C. An applicant who wishes to sell tobacco/nicotine products in North Attleborough is required to submit a fully completed application, including proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue as required by state law, attach the appropriate fee, and make an initial appearance before the Board, before a permit can be issued.
- D. The fee for a permit shall be determined annually by the Board. All such permits shall expire annually on January 31st and must be renewed annually.
- E. A separate permit is required for each retail establishment selling tobacco products, as defined herein.
- F. Each permit shall be displayed at the retail establishment in a conspicuous place.
- G. A permit is non-transferable and exclusively applicable to a single, specific address. The new owner of an establishment that wishes to sell tobacco products, as defined herein, must apply for and be granted a new permit to sell tobacco products, as defined herein. No new permit applicable to a single, specific address will be issued unless and until all outstanding penalties incurred by the previous permit holder at the same address have been satisfied in full.
- H. Issuance of a permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of that person's retail establishment to ensure compliance with this regulation.
- I. A 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 and/or the permit holder has not satisfied any outstanding permit suspensions.
- J. A permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (Article II ¶A) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with Article XVII ¶D.
- K. Retail Establishments, other than Adult-only, shall not place any tobacco or nicotine product on the counter, but shall place all tobacco products for sale behind the counter. No person shall sell an electronic delivery system with nicotine content greater than 35 milligrams per milliliter outside of an Adult-only retail store. Retail establishments may sell or provide unflavored electronic delivery systems with nicotine content less than or equal to 35 milligrams per milliliter. The owner, retailer, or person in charge of the retail establishment must maintain record of the nicotine content submitted by the manufacturer for each electronic nicotine delivery system sold or offered for sale within the retail establishment, and provide such records upon request of any authorized enforcement agent, including the Board of Health or

their agents and MDPH or its agent. This documentation must be available prior to the sale of any product.

L. Maximum number of permits:

1. At any given time, the Board shall assure that **no more than thirty (30) permits are issued** in North Attleborough. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a -first-come, first-served basis as issued permits are either not renewed, revoked, or are returned to the Board.
2. A permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
3. At any given time, there will be no more than two (2) Tobacco Products Sales Permits issued to Adult-only Tobacco Stores, as defined herein, in North Attleborough permitted within the total number of thirty (30) permits issued.
4. Applicants who purchase an existing business that holds a current permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein, provided however, that the buyer not sell or otherwise distribute tobacco products, as defined herein, within North Attleborough without first obtaining a Tobacco Sales Permit pursuant to Article V (A) above.

M. Sale of a tobacco/nicotine product by any retail establishment to a person under the minimum sales age shall result in the retail establishment being prohibited from selling tobacco products for up to 30 consecutive business days.

ARTICLE VI. CIGAR SALES REGULATED:

A. No person shall sell or distribute or cause to be sold or distributed a single cigar having a retail price less than two dollars and fifty cents (\$2.50).

B. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.

C. This section shall not apply to:

1. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
2. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of North Attleborough.

D. From time to time, the Board may adjust the amounts specified in this section by amendment of this

regulation in order to reflect changes in the applicable Consumer Price Index.

ARTICLE VII. SALE OF FLAVORED TOBACCO PRODUCTS:

- A. No person shall sell or distribute or cause to be sold or distributed any flavored tobacco or nicotine product effective December 11, 2019. Menthol may be sold in adult-only retail tobacco stores until May 31, 2020. Effective June 1, 2020 no flavored tobacco or nicotine product will be sold in North Attleboro.

ARTICLE VIII. SALE OF SMOKE ACCESSORIES PROHIBITED:

- A. No person shall sell or distribute or cause to be sold or distributed any smoke accessories, as defined herein, with the exception of rolling papers, except in adult-only retail tobacco stores, marijuana retailers, or registered marijuana dispensaries, as defined herein.

ARTICLE IX. SALE OF BLUNT WRAPS:

- A. The sale or distribution of blunt wraps in North Attleborough is prohibited.

ARTICLE X. FREE DISTRIBUTION and COUPON REDEMPTION:

- A. No person shall:
1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein, or;
 2. Accept or redeem, or offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco products, as defined herein, for less than the listed or non-discounted price, or without any charge whatsoever, or;
 3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without any charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
 4. Sections 2 and 3 above shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

ARTICLE XI. OUT-OF-PACKAGE SALES:

- A. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. 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.

- B. A retailer of liquid nicotine containers must comply with the provisions of 310 CMR 30.000, and must

submit, with its application for a permit, a written plan acceptable to the Board for a take-back protocol for the liquid nicotine containers, devices and component parts thereof, including the proper disposal of any breakage, spillage, return or expiration of such products.

C. All retailers must comply with 940 CMR 21.05 which reads: -It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 et. seq.¶

ARTICLE XII. SELF-SERVICE DISPLAYS

A. All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

ARTICLE XIII. VENDING MACHINES:

A. All vending machines containing tobacco products, as defined herein, are prohibited.

ARTICLE XIV. NON-RESIDENTIAL ROLL-YOU-OWN MACHINES:

A. All non-residential roll-your-own machines are prohibited.

ARTICLE XV. SALE OF TOBACCO PRODUCTS BY HEALTH CARE INSTITUTIONS:

A. No health care institution located in this town shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates, or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

ARTICLE XVI. SALE OF TOBACCO PRODUCTS BY EDUCATIONAL INSTITUTIONS:

A. No educational institution located in this town shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

ARTICLE XVII. INCORPORATION OF ATTORNEY GENERAL REGULATION 940 CMR 21.00:

A. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (—Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts¶). The sale or distribution of tobacco and/or nicotine products, as defined herein, must also comply with those provisions found at 105 CMR 665.00 (Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems).

ARTICLE XVIII. INSPECTIONS:

- A. The Board and its agents, including its employees, assigns and any law enforcement officers acting in an official capacity, may enter upon privately-owned property within North Attleborough, with reasonable notice and at reasonable hours, for the purpose of ensuring compliance with this regulation.
- B. The Board and its agents, including its employees, assigns and any law enforcement officers acting in an official capacity, shall conduct without limitation, periodic, unannounced inspections of the establishments permitted to sell tobacco or tobacco products within North Attleborough.
- C. The Board and its agents, including its employees, assigns and any law enforcement officers acting in an official capacity, shall have access at all reasonable times to any establishment permitted to sell tobacco or tobacco products within North Attleborough, for the purpose of inspecting said establishment to ensure compliance with this regulation.

ARTICLE XIX. 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 North Attleborough 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 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the permit shall be suspended for a minimum of seven (7) consecutive business days.
 3. In the case of three or more violations within a 24 month period, a fine of three hundred dollars (\$300.00) and the permit shall be suspended for a minimum of fourteen (14) consecutive business days.
 4. In the case of four violations or repeated, egregious violations of this regulation within a 24 month period, the Board shall hold a hearing in accordance with Article XVII ¶D herein and may permanently revoke a permit.
- B. Refusal to cooperate with inspections pursuant to this regulation shall result in suspension of the permit for thirty (30) consecutive business days.
- C. Unless otherwise specified or provided for in 105 CMR 665.000, violations of 105 CMR 665.000 portions of which are included within these regulations, but not in entirety, shall be assessed as follows per MDPH regulation. It shall be the responsibility of any person to ensure compliance with 105 CMR 665.00. If an inspection reveals a retail establishment, and/or his or her business agent does not comply with the provisions of 105 CMR 665.000, the retail establishment shall be ordered to comply and the following fines and actions shall apply against any person who violates 105 CMR 665.00:

1. In the case of a first violation, a fine of \$1,000 shall be imposed.
 2. In the case of a second violation within a period of 36 months from the first violation, a fine of \$2,000 shall be imposed; and a prohibition on the sale of tobacco and/or nicotine products may be imposed for at least one day and up to seven consecutive business days.
 3. In the case of a third violation within a period of 36 months from the first violation or additional violations during that time period, a fine of \$5,000 shall be imposed; and a prohibition on the sale of tobacco and/or nicotine products may be imposed for at least seven consecutive business days and up to 30 consecutive business days.
- D. In addition to the monetary fines set forth above, any permit holder who engages in the sale or distribution of tobacco/nicotine products while his or her permit is suspended shall be subject to the suspension of all Board-issued licenses or permits of any kind for thirty (30) consecutive business days.
- E. The Board shall provide notice of the intent to suspend or revoke a permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and the reasons therefor in writing. After a hearing, the Board may suspend or revoke the permit if the Board finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco/nicotine products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of a permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
- F. An Order to Cease and Desist may be issued by MDPH or Board of Health to a person or a business agent of a retail establishment upon the regulatory authority's reasonable belief that:
1. A person is conducting sales of tobacco/nicotine products in violation of the law, regulation, and/or standards applicable to it; or
 2. A person refuses access to the premises and/or records to authorized enforcement agents; or
 3. A person or retail establishment is operating in a manner that may pose an imminent danger to the public health; or
 4. A retail establishment has failed to comply with a correction order within the time specified; or
 5. A retail establishment is operating in a manner that is unsafe or otherwise below the accepted standards for the type of operation and summary closure is authorized by statute on these grounds.
 6. Services of Orders to Cease and Desist shall be on the person or retail establishment or business agent of the retail establishment by: personal delivery by an agent of the regulatory agency; or posting in a conspicuous place at the retail establishment; or simultaneously mailing, by first class and certified mail return receipt requested; or by any officer of the Commonwealth or Board of

Health authorized to make service

7. Notice is deemed to be served if the person or retail establishment or business agent of the retail establishment of the retail establishment has actual notice of the Order to Cease and Desist.

ARTICLE XX. NON-CRIMINAL DISPOSITION of VIOLATIONS:

A. 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.

ARTICLE XXI. SEPARATE VIOLATIONS:

A. Each day any violation exists shall be deemed to be a separate offense.

ARTICLE XXII. ENFORCEMENT:

A. By vote of the Board on December 17, 2019, enforcement of this regulation shall be by the Board or its designated agent(s), which shall include Federal Drug Administration (FDA) Tobacco Enforcement Program Inspectors (FDA Inspectors).

B. Any resident who desires to register a complaint pursuant to this regulation may do so by contacting the Board or its designated agent(s) and the Board shall investigate.

C. Whenever an emergency related to tobacco/nicotine products exists in which the interest of protecting the public health requires that ordinary procedures be dispensed with, the Board of Health or its authorized agent, acting in accordance with the provisions of M.G.L. c. 111, § 30, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring such action be taken as the Board of Health deems necessary to meet the emergency. Any person to whom such order is directed shall comply therewith within the time specified in the order. Upon compliance with the order and within seven days after the day the order has been served, he or she may file a written petition in the office of the Board of Health requesting a hearing. He or she shall be granted a hearing conforming with the hearing requirements which would have existed had the order been issued under non-emergency circumstances.

ARTICLE XXIII. SEVERABILITY:

A. 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.

ARTICLE XXIV. EFFECTIVE DATE

A. This regulation supersedes and replaces the following regulation of the Board: Sale of Tobacco Regulation, adopted April 26, 2016. This regulation shall take effect on January 1, 2020 following its adoption by the Board of Health at its regularly scheduled meeting of December 17, 2019, and as required by M.G.L. c.111 §31, a copy of the regulation has been filed with the Massachusetts Department of Environmental Protection.

By the North Attleborough Board of Health:

John J. Donohue, Jr., Chairman

Donald M. Bates, Member

Jonathan D. Maslen, Member

APPENDIX:

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

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⁵ Health and Human Services. 2014. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General, 2014 U.S. Surgeon General’s Report* Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁶ United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al., 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

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¹⁰ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

¹¹ 21 U.S.C. § 387g.

¹² Carpenter CM, Wayne GF, Pauly JL, et al. 2005. –New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies. *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. –Dealing with an Innovative Industry: A Look at

Flavored Cigarettes Promoted by Mainstream Brands. *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. –Sweet and Spicy Flavours: New Brands for Minorities and Youth. *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁴ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf;

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¹⁷ Cameron JM, Howell DN, White JR, et al. 2013. –Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions. *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

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²⁵ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).