

**Town of North Andover
Board of Health**

SECTION 1 RESTRICTING THE SALE OF TOBACCO & NICOTINE DELIVERY PRODUCTS: PURPOSE

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat (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;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were aged less than eighteen (18) years, 14.1% usually obtained their own cigarettes by buying them in a store (i.e., convenience store, supermarket, or discount store) or gas station (CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.);

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes (CDC Office of Smoking and Health, National *Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.);

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/);

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem;

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

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history (Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.)

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4% (Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109);

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>;

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit and high prices deter youth from starting. Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco (¹ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.) and (Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>);

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) (TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>;

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

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products and nicotine delivery products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Now, therefore it is the intention of the North Andover Board of Health to regulate the sale of tobacco products and nicotine delivery products.

SECTION 2 DEFINITIONS

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

4.2.001 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.

4.2.002 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.

4.2.003 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.

4.2.004 E-CIGARETTE: Any electronic Nicotine Delivery Product 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 solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

4.2.006 EMPLOYEE: Any individual who performs services for an employer.

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

4.2.008 ENCLOSED: A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

4.2.009 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 institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

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

4.2.011 NICOTINE DELIVERY PRODUCT: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States 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. Nicotine delivery product includes, but is not limited to, e-cigarettes.

4.2.012 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.

4.2.013 OUTDOOR SPACE: An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

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

4.2.015 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.

4.2.016 RETAIL TOBACCO STORE: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the North Andover Board of Health.

4.2.017 SELF SERVICE DISPLAY: Any display from which customers may select a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel, excluding vending machines.

4.2.018 SMOKING (or smoke): The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

4.2.019 SMOKING BAR: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, Section 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking Bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

4.2.020 TOBACCO PRODUCT: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

4.2.021 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, any other tobacco product or Nicotine Delivery Product.

SECTION 3 TOBACCO AND NICOTINE DELIVERY PRODUCT SALES TO MINORS PROHIBITED

4.3.001 No person shall sell or otherwise distribute tobacco or nicotine delivery products to a minor.

4.3.002 REQUIRED SIGNAGE

- 4.3.002(1)** In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 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 the Massachusetts Department of Public Health and made available from the North Andover Board of Health. 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 products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
- 4.3.002(2)** The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the North Andover Board of Health that discloses current referral information about smoking cessation.
- 4.3.002(3)** The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating that “The sale of nicotine delivery products to minors under 18 years of age is prohibited.” The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The 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. These 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.
- 4.3.003** IDENTIFICATION: Each person selling or distributing tobacco products 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, regardless of age. Identification: Each person shall verify by means of government-issued photographic identification containing the bearers date of birth that the purchaser is 18 years old or older. In addition to state law 940 CMR 21.04(2)(b), which requires verification for anyone who appears 30 years of age or younger, the North Andover Board of Health recommends verification for all purchasers of tobacco products, regardless of age.
- 4.3.004** All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer (except for the purchase of tobacco from vending machines) and all retail sales of tobacco or nicotine delivery products must occur at a location with a valid tobacco and nicotine delivery product sales permit.

SECTION 4 TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT

4.4.001 No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within North Andover without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit

issued annually by the North Andover Board of Health. Only owners of establishments with a permanent, non-mobile location in North Andover are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in North Andover.

4.4.002 As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the North Andover Board of Health 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 tobacco and nicotine delivery product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

4.4.003 Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.

4.4.004 The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be in accordance with the most current Board of Health fee schedule. All such permits shall be renewed annually by June 30th of every year.

4.4.005 A separate permit is required for each location where a retail establishment is selling tobacco or nicotine delivery products.

4.4.006 Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

4.4.007 No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal and state laws regarding the sale of tobacco 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 and federal laws.

4.4.008 A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable

4.4.009 Issuance of a Tobacco and 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.

4.4.010 Issuance and holding of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

4.4.011 A Tobacco and 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 and/or has not satisfied any outstanding permit suspensions.

SECTION 5 CIGAR SALES REGULATED:

4.5.001 No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

4.5.002 This Section shall not apply to:

- (a) The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- (b) 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 Andover.

4.5.003 The North Andover Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

SECTION 6 THE SALE OF BLUNT WRAPS

No person or entity shall sell or distribute blunt wraps within North Andover, except that retail tobacco stores are permitted to sell or distribute blunt wraps.

SECTION 7 FREE DISTRIBUTION AND COUPON REDEMPTION

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of tobacco products for free or at a reduced price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permittee.

SECTION 8 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 9 SELF SERVICE DISPLAYS

4.9.001 All self service displays of tobacco products and/or nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

4.9.001(a) EXEMPTION: Self service displays that are located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

SECTION 10 TOBACCO VENDING MACHINES

4.10.001 All tobacco and/or nicotine delivery product vending machines are prohibited.

4.10.001(a) EXEMPTION: Vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an

employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.

SECTION 11 NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINES

All Non-Residential Roll-Your-Own (RYO) Machines are prohibited.

SECTION 12 RESTRICTIONS ON THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS AT HEALTH CARE INSTITUTIONS:

The North Andover Board of Health strongly encourages health care institutions that sell tobacco and nicotine delivery products to store these products in a manner that is hidden from the view of customers and the general public. The North Andover Board of Health reserves the right to enact regulations eliminating the sale of tobacco and nicotine delivery products at health care institutions if said institutions are unsuccessful in storing these products in the aforementioned manner.

SECTION 13 PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS BY EDUCATIONAL INSTITUTIONS:

No educational institution located in North Andover shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

SECTION 14 VIOLATIONS/ENFORCEMENT/PENALTIES

14.001 It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:

- a) In the case of a first violation, a fine of one hundred (100) dollars;
- b) In the case of a second violation within twenty-four (24) months of the date of the first violation, a fine of two hundred (200) dollars and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for seven (7) consecutive business days.
- c) In the case of a third violation within a twenty-four (24) month period, a fine of three hundred (300) dollars and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for thirty (30) consecutive business days.
- d) In the case of more than three violations within a twenty-four (24) month period, a fine of three hundred (300) dollars per additional violation and the Tobacco and Nicotine Delivery Product Sales Permit may be revoked.

14.002 Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

14.003 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is

suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

14.004 The North Andover Board of Health shall provide notice of the intent to suspend or revoke a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefore 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 of Health's decision, and the reasons therefore in writing. After a hearing, the North Andover Board of Health shall suspend or revoke the Tobacco and Nicotine Delivery Product Sales 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 products and nicotine delivery products shall be removed from the retail establishment upon suspension or revocation of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

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

14.006 Enforcement: Enforcement of this regulation shall be by the North Andover 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 North Andover Board of Health or its designated agent(s), and the Board may investigate.

SECTION 15 OTHER APPLICABLE LAWS

15.001 This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety and fire codes, regulations or statutes.

SECTION 16 PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

16.001 The Board of Health adopts the Massachusetts Smoke-Free Workplace Law (Massachusetts General Law Chapter 270, Sections 21 and 22) by reference and any future revisions as a local regulation.

16.002 Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is also hereby prohibited in the following locations:

- a) retail tobacco store, except that smoking will be permitted in this establishment if it is housed in a freestanding building that is not occupied by any other business, residence or workplace.
- b) smoking bar
- c) outdoor spaces of restaurants, bars, taverns and any other outdoor space where food and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the public and served to the public, or otherwise consumed or carried by the public.

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16.003 The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts General Laws Chapter 270, Section 22 and Section 4.17.002 of this regulation.

SECTION 17 THROUGH 21

Reserved for future regulations, amendments, etc.

SECTION 22 SEVERABILITY

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

Effective Date:

This regulation shall take effect on _____