



**Regulations of the Northborough Board of
Health Restricting the Sale and Use of
Tobacco Products and Nicotine Delivery
Products**

A. Statement of Purpose:

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

Whereas it was reported in 2009 that among the 15.7% of students nationwide who smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

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 cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health 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 youth⁵;

Whereas 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 went from 11.8% in 2003 to 14.9% in 2009⁶;

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.

² 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>.

³ 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.

⁴ 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/.

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

⁶ CDC (2009) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 72 (No SS-55)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

Whereas survey results have shown that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported⁷;

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 history⁸;

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%⁹;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes¹⁰;

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 quit¹¹ and high prices deter youth from starting;¹² 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;

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

⁷ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

⁸ 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.

⁹ 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.

¹⁰ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

¹¹ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

¹² Chaloupka, F. J. & Lippman, 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/>.

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)¹³;

Whereas the sale of tobacco products and nicotine delivery 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 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 is 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 Northborough Board of Health to regulate the sale of tobacco products and nicotine delivery products.

B. Authority:

These regulations are promulgated pursuant to the authority granted to the Northborough Board of Health by Massachusetts General Laws Chapter 111, Section 31, which provides that "Boards of Health may make reasonable health regulations."

C. Definitions:

For the purpose of these regulations, the following words shall have the following meanings:

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.

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.

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 Laws, Chapter 64C, Section 1.

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

¹³ TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

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.

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

Employee: Any individual who performs services for an employer in return for wages or profit or who performs services as a volunteer.

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

Flavored Tobacco Product or Flavored Nicotine Delivery Product: Any tobacco product or nicotine delivery product including e-cigarettes as defined herein or any component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product or nicotine delivery product, including e-cigarettes as defined herein, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that such products have or produce a characterizing flavor shall constitute presumptive evidence that the product is a flavored 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 and dentist offices.

Minor: Any individual who is under the age of twenty-one (21).

Municipal Building: Any building owned or leased by the Town of Northborough.

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 products include, but are not limited to, e-cigarettes.

Non-Profit Agency: Any individual, partnership, corporation, or other entity that provides goods or services on a not-for-profit basis.

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 or nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product sales permit , or his or her business agent.

Person: An individual or entity, including an employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

Restaurant: Any coffee shop, cafeteria, sandwich stand, private or school cafeteria, and any other eating establishment including bar areas or dining establishments which gives or offers food for sale to the public, guests or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

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 to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which, by the provisions of M.G.L. chapter 270, section 22, the entry of persons under the age of eighteen (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 Northborough Board of Health. In Northborough, the entry into such a store of persons under the age of twenty-one (21) is prohibited at all times.

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.

Smoking: 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.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff, snus, or tobacco in any of its forms.

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.

D. Tobacco and Nicotine Delivery Product Sales to Minors Prohibited:

1. No person shall sell tobacco or nicotine delivery products or permit 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.
2. Required Signage

- a. In conformance with and in addition to Massachusetts General Laws, 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 Northborough 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 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 Massachusetts Department of Public Health.
 - b. 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 Northborough Board of Health that discloses current referral information about smoking cessation.
 - c. 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 "The sale of nicotine delivery products to minors under 21 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, "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 4 feet or greater than 9 feet from the floor.
3. Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth so as to confirm that the purchaser is twenty-one (21) years old or older. Verification is required for any person reasonably appearing to be under the age of 27.
 4. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco and Nicotine Delivery Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail establishments within the Town of Northborough without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Northborough Board of Health. Only owners of establishments with a permanent, non-mobile location in Northborough are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Northborough.

2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with these Northborough Board of Health regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulations 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 governing the sale of tobacco and these regulations. It shall be the responsibility of the permittee to instruct all employees on the sale of tobacco products to minors.
3. 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. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Northborough Board of Health annually. All such permits shall be subject to renewal annually, no later than December 31st.
5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.
6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. 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 these regulations 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 regulations and applicable state and federal laws.
8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. 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 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 these regulations.
10. 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.

F. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Northborough.

G. 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 any tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

H. Out-of-Package Sales:

The sale or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited. 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.

I. Self-Service Displays:

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.

J. Vending Machines:

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

K. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

L. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions:

No health care institution located in Northborough 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 products or nicotine delivery products.

M. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:

No educational institution located in Northborough 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.

N. Prohibition of Smoking in Public Places

The use of tobacco products is prohibited on all of the following properties in the Town of Northborough:

Northborough Free Library located at 34 Main Street
 Senior Center located at 119 Bearfoot Road
 Police Station located at 211 Main Street
 Fire Station located at 11 Pierce Street
 Town Hall located at 63 Main Street
 DPW Highway Garage located at 190 Main Street

Fannie E. Proctor Elementary School located at 26 Jefferson Road
 Lincoln Street Elementary School located at 7 Lincoln Street
 Marguerite E. Peaslee Elementary School located at 31 Maple Street
 Marion Zeh Elementary School located at 33 Howard Street
 Robert E. Melican Middle School located at 145 Lincoln Street
 Algonquin Regional High School located at 79 Bartlett Street

Board of Health agents may, upon witnessing or otherwise determining that a violation of these regulations has occurred, issue a penalty notice of \$100.00 to the violator.

O. Prohibition of Smoking in Outdoor Seating Areas of Restaurants

Smoking is hereby prohibited in Northborough in accordance with M.G.L. Ch. 270, Section 22 (Commonly known as the "Smoke Free Workplace Law").

Smoking is prohibited in any outdoor seating area of a restaurant or bar where food is served. If food is served, this area is considered part of the food establishment and smoking is therefore prohibited within twenty-five (25) feet of this area. Private function areas which are clearly labeled as such are exempt from this Section O of these regulations.

The owner, operator, manager, or person in charge of any public place shall prevent smoking in areas by requiring patrons or others who may be smoking to refrain from smoking or to leave the premises and by using any legal means which may be appropriate and reasonable to enforce these regulations.

P. Violations:

1. The penalty for selling tobacco products or nicotine delivery products without a valid permit shall be \$300.00.
2. It shall be the responsibility of any establishment, permit holder and/or his or her business agent to ensure compliance with all sections of these regulations pertaining to smoking in a location where smoking is prohibited and to his or her distribution of tobacco and/or nicotine delivery products. Except as provided in paragraph 1 above, the

violator shall be subject to:

- a. In the case of a first violation, a penalty of one hundred dollars (\$100.00).
 - b. In the case of a second violation within twenty-four (24) months of the date of a prior violation, a penalty of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a twenty-four (24) month period, a penalty of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for a period of more than seven (7) consecutive business days as determined by the Northborough Board of Health.
3. Refusal to cooperate with inspections pursuant to these regulations shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.
 4. In addition to the monetary penalties set forth 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.
 5. The Northborough Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales 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 of Health's decision and the reasons therefor in writing. After a hearing, the Northborough Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of these regulations occurred. For purposes of such suspensions, 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 of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of these regulations, subject to a penalty of one hundred dollars (\$100.00) per business day.

Q. Non-Criminal Disposition:

Whoever violates any provision of these regulations may be penalized by the non-criminal

method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D as an alternative to the filing of a criminal complaint.

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

R. Enforcement:

Enforcement of these regulations shall be by the Northborough Board of Health or its designated agent(s).



Any resident who desires to register a complaint pursuant to these regulations may do so by contacting the Northborough Board of Health or its designated agent(s).

S. Severability:

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.

T. Effective Date:

These regulations shall take effect on July 1, 2015
and shall replace all previous Northborough Board of Health regulations on the sale of tobacco products.

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