

THE TEWKSBURY BOARD OF HEALTH REGULATIONS

CHAPTER 11: TOBACCO CONTROL - RESTRICTING THE SALE OF TOBACCO PRODUCTS & NICOTINE DELIVERY PRODUCTS

11.1 AUTHORITY

This regulation is promulgated pursuant to the authority granted to the Tewksbury Board of Health (the "Board") by M.G.L. Chapter 111, § 31, that "Boards of Health may make reasonable health regulations."

11.2 PURPOSE

There exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat. Among the 15.7% of students nationwide who currently smoked cigarettes and were aged less than 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 during the 30 days before a survey by the Centers for Disease Control and Prevention (the "CDC"). Nationally in 2000, 69% of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes. The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin. Despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem. According to the CDC, cigarette price increases reduce the demand for cigarettes and thereby reduce smoking prevalence, cigarette consumption, and youth initiation of smoking.

Commercial Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health. Also,

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Commercial Roll Your Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the federal and state excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit and deter youth from starting. Therefore, 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.

Educational institutions sell tobacco products to a younger population, which 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.

Because of the facts stated above, the Board intends to regulate the access of tobacco products and nicotine delivery products in the Town of Tewksbury (“Tewksbury”).

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11.3 DEFINITIONS

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise.

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 M.G.L. c. 64C, § 1, Paragraph 1.

Commercial Roll-Your-Own (RYO) Machine: A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products. RYO machines intended for home-use or non-business use are not Commercial Roll-Your-Own Machines.

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.

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: An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time. Employees shall include persons who volunteer their time for an employer.

Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Tewksbury.

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

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 tobacco substitute prescribed by a licensed physician or a product that has been 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.

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.

Person: Any individual, partnership, company, corporation, trustee, trust, organization, or other legal entity.

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 Board.

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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.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff 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.

11.4. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES TO MINORS PROHIBITED

11.4.1 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.

11.4.2 Required Signage. In conformance with and in addition to M.G.L. c. 270, § 7, a copy of M.G.L. c. 270, § 6, shall be posted conspicuously by the owner or other person in charge 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 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

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conspicuously post any additional signs required by the Massachusetts Department of Public Health.

11.4.3 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 Board that discloses current referral information about smoking cessation.

11.4.4 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 4 feet or greater than 9 feet from the floor.

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11.4.5 Identification. Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

11.4.6 All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer.

11.5 TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT

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

11.5.2 As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Board 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 both state laws regarding the sale of tobacco and this regulation.

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

11.5.4 The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Board annually. All such permits shall expire annually on December 31st.

11.5.5 A separate permit is required for each retail establishment selling tobacco or nicotine delivery products.

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

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11.5.7 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 this regulation 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 or she has read the regulation and applicable state laws.

11.5.8 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.

11.5.9 Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his or her retail establishment to ensure compliance with this regulation.

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

11.5.11 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.

11.6 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

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the redemption of tobacco products for free or at a reduced price below the minimum retail price determined by the MDOR shall be accepted by any permittee.

11.7 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 20 cigarettes, including single cigarettes.

11.8 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.

11.9 VENDING MACHINES

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

11.10 COMMERCIAL ROLL-YOUR-OWN MACHINES

All commercial Roll-Your-Own machines are prohibited except those located in retail tobacco stores.

11.11 PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS BY EDUCATIONAL INSTITUTIONS

No educational institution located in Tewksbury 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.

11.12 VIOLATIONS

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11.12.1 The establishment, permit holder and/or his or her business agent are responsible 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:

11.12.1.a In the case of a first violation, a fine of \$100.

11.12.1.b In the case of a second violation within 24 months of the date of the first violation, a fine of \$200 and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for 7 consecutive business days.

11.12.1.c In the case of 3 or more violations within a 24-month period, a fine of \$300; and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.

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

11.12.3 The Board 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 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 its reasons in writing. After a hearing, the Board shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a violation of these regulations occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding

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any separate criminal or non-criminal proceedings brought in court 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 this regulation.

11.13 NON-CRIMINAL DISPOSITION

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in M.G.L. c. 40, § 21 D or by filing a criminal complaint at the appropriate venue.

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

11.14 ENFORCEMENT

Enforcement of this regulation shall be by the Board or its designees.

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board or its designees and the Board shall investigate.

11.15 SEVERABILITY

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

11.16 EFFECTIVE DATE

Regulations adopted on September 20, 2012 and shall take effect on January 1, 2013.

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