

THE TEWKSBURY BOARD OF HEALTH REGULATIONS

CHAPTER 11: RESTRICTING THE SALE OF TOBACCO PRODUCTS

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TOWN OF TEWKSBURY
BOARD OF HEALTH REGULATIONS
TEWKSBURY, MA

11.1 Authority:

This regulation is promulgated pursuant to the authority granted to the Town of Tewksbury Board of Health by Massachusetts General Laws Chapter 111, Section 31, which states "Boards of health may make reasonable health regulations".

11.2 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;

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

Whereas 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 smoke;

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;

Whereas survey results show 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 underreported;

Now, therefore it is the intention of the Tewksbury Board of Health to regulate the sale of tobacco products, as defined herein, primarily to reduce youth and underage access to tobacco products and to advance public health.

11.3 Definitions:

For the purpose of this regulation, 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 Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco 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.

Compensation: Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

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 product during the processing, manufacturing or packaging of the tobacco 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.

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 Cigarette: Any electronic device composed of a mouthpiece, heating element, battery and /or electronic circuits that provides vapor of liquids, regardless of nicotine content, or relies on vaporization of any solid or liquid substance, regardless of nicotine content. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

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 products who applies for and receives a Tobacco Product Sales Permit, 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, a manager, proprietor or person in charge of any establishment, business or retail store.

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 tobacco paraphernalia, 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 maintains a valid permit for the retail sale of tobacco products as required to be issued by the Tewksbury Board of Health.

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

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream 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 the retail sale of tobacco products for consumption by customers on the premises and is required by Massachusetts General Laws Chapter 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".

Tobacco and/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, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization 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.

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.

11.4 Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited

11.4.1 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; 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. The minimum legal sales age in the Town of Tewksbury is 21.¹

11.4.2 Required Signage.

11.4.2.a 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 Town of Tewksbury Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the owner or other person in charge of a shop or other place used to sell tobacco products at retail 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

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Department of Public Health.

11.4.2.b The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that “The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited.” The notice 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.

11.4.2.c The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Tewksbury Board of Health that discloses current referral information about smoking cessation.

11.4.3 Identification: Each person selling or distributing tobacco products, as defined herein, 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 21 years old or older. Verification is required for any person under the age of 40.²

11.4.4 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.

11.5 Tobacco Product Sales Permit:

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

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

11.5.3 Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

11.5.4 The fee for a Tobacco Product Sales Permit shall be determined by the

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Tewksbury Board of Health annually.

11.5.5 A separate permit is required for each retail establishment selling tobacco products, as defined herein.

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

11.5.7 No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco 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 Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, 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 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 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.

11.5.11 A Tobacco 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 Cigar Sales Regulated:

11.6.1 No person shall sell or distribute or cause to be sold or distributed a single cigar.³

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

11.6.3 This Section shall not apply to:

15.6.3.a The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

15.6.3.b A person or entity engaged in the business of selling or distributing

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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 Tewksbury.

11.7 Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.⁴

11.8 The Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps within Tewksbury, except that retail tobacco stores are permitted to sell or distribute blunt wraps.⁵

11.9 Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of tobacco products, as defined herein, 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.

11.10 Out-Of-Package Sales:

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.

11.11 Self-Service Displays:

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

11.12 Vending Machines:

All vending machines containing tobacco products are prohibited.

11.13 Non-Residential Roll-Your-Own Machines:

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

11.14 Prohibition on the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Tewksbury 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.

11.15 Prohibiting Smoking in Workplaces and Public Places:

11.15.1 The Tewksbury 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.

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

11.15.2.a retail tobacco store,

11.15.2.b smoking bar

11.16 Use of Electronic Cigarettes

The use of electronic cigarettes is prohibited wherever smoking is prohibited per all Massachusetts state laws and regulations, including, but not limited to, General Laws Chapter 270, Section 22 and Section 11.5.2 of this regulation.

11.17 Violations:

11.17.1 It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

11.17.1.a In the case of a first violation, a fine of one hundred dollars (\$100) and a mandatory appearance before the Tewksbury Board of Health to explain the plan he or she has developed to avoid additional violations.⁶

11.17.1.b In the case of a second violation within a twenty four (24) month period, a fine of two hundred dollars (\$200) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

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11.17.1.c In the case of three or more violations within a twenty four (24) month period, a fine of three hundred dollars (\$300) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

11.17.1.d In the case of more than three violations of this regulation within a twenty four (24) month period, or even one violation deemed by the Tewksbury Board of Health a willful and egregious violation, the Tewksbury Board of Health may revoke a Tobacco Product Sales Permit.

11.17.2 Refusal to cooperate with inspections pursuant to this regulation may result in the suspension or revocation of the Tobacco Product Sales Permit depending on the circumstances.

11.17.3 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended, or any non-permit holder who engages in such sale or distribution, may be subject to the suspension of all Tewksbury Board of Health issued permits for thirty (30) consecutive business days.

11.17.4 The Tewksbury Board of Health shall provide notice of the intent to suspend a Tobacco 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 Tewksbury Board of Health's decision and its reasons therefor in writing. After a hearing, the Tewksbury Board of Health may suspend the Tobacco Product Sales Permit if the Tewksbury Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Tewksbury Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the sales floor out of customer view and stored in a secured area approved by the Tewksbury Board of Health. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

11.18 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.

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11.19 Enforcement:

Enforcement of this regulation shall be by the Tewksbury Board of Health or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Tewksbury Board of Health or its designated agent(s) and the Tewksbury Board of Health or its designated agent(s) shall investigate.

11.20 Severability:

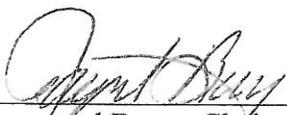
If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

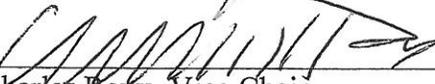
11.21 Effective Date:

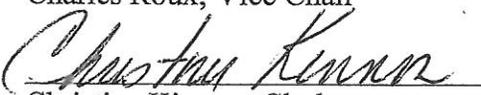
This regulation combines and supersedes the prior regulations titled "Chapter 11: Tobacco Control – Restricting The Sale of Tobacco Products & Nicotine Delivery Products" and "Chapter 12: Prohibiting Smoking in Workplaces and Public Places" which were both adopted on September 20, 2012 and took effect on January, 2013 and thereafter amended.

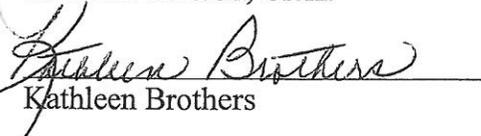
This regulation was amended on March 17, 2016.

This regulation shall take effect on June 1, 2016.

1. 

Raymond Barry, Chairman
2. 

Charles Roux, Vice Chair
3. 

Christine Kinnon, Clerk
4. 

Kathleen Brothers
5. _____
Phillip French

Revised September 20, 2012

Revised March 17, 2016

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- ¹ March 17, 2016 – prohibit sales to under 21
 - ² March 17, 2016 – under age of 40 photo id check
 - ³ March 17, 2016 – single cigar restriction
 - ⁴ March 17, 2016 – prohibit some flavored tobacco sales
 - ⁵ March 17, 2016 – prohibit some sales of blunt wrap
 - ⁶ March 17, 2016 – appear before the Tewksbury Board of Health