

**Town of North Andover
Board of Health**

REGULATING THE SALE and USE OF TOBACCO & NICOTINE DELIVERY PRODUCTS

SECTION 1 PURPOSE

It is the intention of the North Andover Board of Health to regulate the sale of tobacco products and nicotine delivery products, primarily to reduce youth and underage access to nicotine and nicotine delivery products and to advance public health.

SECTION 2 DEFINITIONS

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

2.1 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.

2.2 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.

2.3 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.

2.4 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 or nicotine delivery 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 or nicotine delivery product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

2.5 COMPONENT PART: Any element of a tobacco or nicotine delivery product, including, but not limited to, the tobacco, filter, paper, mouthpiece, heating element battery and/or electronic circuits but not including any constituent.

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

delivery product.

2.7 DISTINGUISHABLE: Perceivable by either the sense of smell or taste.

2.8 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.

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

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

2.11 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.

2.12 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.

2.13 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.

2.14 FLAVORED NICOTINE DELIVERY PRODUCT: Any nicotine delivery product, as defined herein, including e-cigarettes, as defined herein, 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 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 product, that the product has or produces a characterizing flavor shall constitute presumptive evidence that the product is a flavored nicotine delivery product, including e-cigarettes as defined herein.

2.15 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.

2.16 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.

2.17 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.

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

2.19 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.

2.20 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.

2.21 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 21 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.

2.22 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.

2.23 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.

2.24 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".

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

2.26 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 PERSONS UNDER THE AGE OF 21 PROHIBITED

3.1 No person shall sell or otherwise distribute tobacco or nicotine delivery products to persons under the age of 21.

3.2 REQUIRED SIGNAGE

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 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 notice shall also disclose current referral information about smoking cessation, as well as notice that the sale of tobacco products, nicotine delivery products including e-cigarettes to someone under the age of 21 is prohibited, and that the use of e-cigarettes is prohibited where smoking is prohibited in the Town of North Andover.

3.3 IDENTIFICATION: Each person selling or distributing tobacco products 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 that the purchaser is 21 years old or older. Verification is required for any person who appears to be under the age of 27.

3.4 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

4.1 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.

4.2 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.

4.3 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.

4.4 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.

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

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

4.7 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 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.

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

4.9 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 this regulation.

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

4.11 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.

SECTION 5 CIGAR SALES REGULATED:

5.1 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. A package of four or more cigars must be priced at the retail market price or at five (\$5.00) dollars, whichever price is higher.

5.2 This Section shall not apply to:

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

5.3 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 FLAVORED TOBACCO PRODUCTS AND FLAVORED NICOTINE DELIVERY PRODUCTS PROHIBITED

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

SECTION 7 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 8 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 or nicotine delivery products for free or cigarettes at a reduced price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

SECTION 9 OUT-OF-PACKAGE SALES

The sale or distribution of tobacco products or nicotine delivery products as defined herein 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.

SECTION 10 SELF SERVICE DISPLAYS

10.1 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.

10.1(a) EXEMPTION: Self-service displays that are located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.

SECTION 11 TOBACCO VENDING MACHINES

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

11.1(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 twenty-one (21) 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 12 NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINES

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

SECTION 13 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 14 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 15 VIOLATIONS/ENFORCEMENT/PENALTIES

15.1 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.

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

15.3 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.

15.4 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 may 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.

15.5 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.

15.6 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 16 OTHER APPLICABLE LAWS

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 17 PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

17.1 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.

17.2 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.

17.3 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 18 THROUGH 21

Reserved for future regulations, amendments, etc.

SECTION 22 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.

SECTION 23

This regulation supersedes the prior regulation titled "Regulations Affecting Smoking in Certain Places and Youth Access to Tobacco," as adopted on January 1, 2002 and thereafter amended.

Effective Date:

This regulation was adopted on June 25, 2015.

This regulation shall take effect on February 2, 2015.

Amendments adopted on June 25, 2015 in Sections 2.21, 3.1, 3.2, 3.3, 10.1(a), and 11.1(a) pertaining to an increase in age from 18 to 21 as the legal minimum legal age for sales of tobacco shall take effect on September 1, 2015.



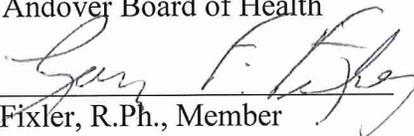
Thomas A. Trowbridge, M.D., D.D.S., Chairman
North Andover Board of Health

8/27/15
Date of Signature



Francis P. MacMillan, M.D., Member
North Andover Board of Health

8/27/2015
Date of Signature



Larry Fixler, R.Ph., Member
North Andover Board of Health

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Edwin Pease, Member
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9/24/15
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Joseph McCarthy, Member
North Andover Board of Health

8/27/15
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