

City of New Bedford

Board of Health Tobacco Control Regulation

Restricting the Sale of Tobacco Products and Nicotine Delivery Products

SECTION I. STATEMENT OF PURPOSE

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

Whereas, Nearly 9 out of 10 cigarette smokers first tried smoking by age 18, and 98% first tried smoking by age 26 (U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General 2014) ; and

Whereas, nationally, each day more than 3,200 people younger than 18 years of age smoke their first cigarette (Id.); and

Whereas, in 2015, according to the U.S. Centers for Disease Control (CDC) nearly 30% of Massachusetts high school youth reported currently using a tobacco product including e-cigarettes; and

Whereas, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and **Whereas**, despite state laws prohibiting the sale of tobacco products to youth, access by youth to tobacco products is a major problem; and

Whereas, the sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication;

Whereas, restricting the sale of unregulated non-prescribed nicotine delivery products, such as e-cigarettes among youth under the age of eighteen may prevent early initiation to nicotine products, prevent nicotine tolerance and potential dependence, which may promote use of conventional tobacco products in the future;

Now therefore, it is the intention of the City of New Bedford Board of Health to curtail the access of tobacco products and nicotine delivery products by youth and regulate the sale of tobacco products and nicotine delivery products.

SECTION II - AUTHORITY

This City of New Bedford Regulation Restricting the Sale of Tobacco Products and Nicotine Delivery Products, hereinafter “***Tobacco Control Regulation***” is promulgated pursuant to the authority granted to the City of New Bedford Board of Health by Massachusetts General Laws Chapter 111, Section 31 "Boards of Health may make reasonable health regulations"

SECTION III – RESERVED

SECTION IV - DEFINITIONS

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

“Adult only” Establishments: Establishments in which the owner or business agent ensures that no person younger than twenty one (21) years of age is present or permitted to enter at any time. Establishments must post signs prohibiting entry by anyone under the age of twenty one (21) at any time.

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.

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 any liquid, or 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.

Employee: Any individual who performs services for an employer. New Bedford BOH – November 3, 2011

Employer: Any individual, partnership, association, corporation, trust, or other organized group of individuals, including the City of New Bedford and any agency thereof, which uses the services of one (1) or more employees.

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. Ch. 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.

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

Nicotine Delivery Product: Any 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 products and/or nicotine delivery products directly to consumers who applies for and receives a tobacco sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

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 products and/or nicotine delivery products directly to consumers.

Self Service Display: Any display from which customers may select a tobacco products and/or nicotine delivery products without assistance from an employee or store personnel.

Tobacco Product: Cigarettes, cigarillos, cigars, chewing tobacco, dip, pipe tobacco, bidis, bluntarillos, blunt wraps, 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 cigarettes or any other tobacco or nicotine delivery product.

SECTION V - SALE AND/OR DISTRIBUTION OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS

A. Tobacco Products and Nicotine Delivery Products Sales Permit

1. No person shall sell or otherwise distribute tobacco products or nicotine delivery products at retail within the City of New Bedford without first obtaining a valid Tobacco Products and Nicotine Delivery Products Sales Permit issued annually by the New Bedford Board of Health.
2. As part of the Tobacco Products and Nicotine Delivery Product Sales permit application process, the applicant will be provided with the New Bedford 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 products and/or nicotine delivery product sales regarding both state laws regarding the sale of tobacco products and/or nicotine delivery products and this regulation.
3. Each applicant is required to provide proof of a current *Tobacco Retailer License* filed with the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
4. The fee for a Tobacco Products and Nicotine Delivery Product Sales Permit shall be determined by the New Bedford Board of Health annually and set forth in the Board of Health's Fee Schedule for Licenses, Permits and Services. All such permits shall be renewed annually by December 31st. Applications for renewal must be submitted at least thirty (30) days prior to the expiration date or a late filing fee shall apply. New Bedford BOH – November 3, 2011 3
5. A separate permit is required for each retail establishment selling tobacco products and/or nicotine delivery products.
6. Each “true original” Tobacco Products and Nicotine Delivery Products Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco Products and Nicotine Delivery Products Sales Permit holder shall allow any employee to sell cigarettes, other tobacco products, and/or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco and nicotine delivery products 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 laws.
8. A Tobacco Products and Nicotine Delivery Products Sales Permit is non-transferable from a person or a location. A new owner of an establishment that sells tobacco and/or nicotine delivery products must apply for a new permit. No new permit will be issued for a given location unless and until all outstanding penalties incurred by the previous permit holder at that location are satisfied in full.
9. Issuance of a Tobacco Products 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.
10. A Tobacco Products 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.

11. Maximum Number of Tobacco and Nicotine Delivery Sales Permits.

- a) At any given time, there shall be no more than 144 Tobacco and Nicotine Delivery Sales Permits issued in New Bedford reduced by the number of permits not renewed pursuant to subsection (b) below. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expirations will be treated as a first-time permit applicant.
- b) As of the date of enactment of this regulation, any permit not renewed either because a retailer no longer sells tobacco or nicotine delivery products, or because a retailer closes the retail business, shall be returned to the New Bedford Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco and Nicotine Delivery Sales Products under paragraph (a) shall be reduced by the number of the retired permits.
- c) Applicants who purchase or acquire an existing business that holds a valid Tobacco and Nicotine Delivery Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the Applicant intends to sell tobacco and nicotine delivery sales permits. (New Bedford BOH – Effective June 25, 2019 5)
- d) Notwithstanding the limit set forth in subsection (a) above, an applicant who has obtained Site Plan Approval by the New Bedford Planning Board for new construction by June 4, 2019, shall be eligible to apply for a Tobacco and Nicotine Delivery Sales Permit. This subsection may result in the total number of Tobacco and Nicotine Delivery Sales Permits issued in New Bedford to exceed the number allowed in subsection (a) above. (New Bedford BOH – Effective July 22 2019 6)

B. Tobacco Products and Nicotine Delivery Product Sales To Youth Prohibited

1. No person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to a Youth; or not being the Youth's parent or legal guardian, give tobacco products or nicotine delivery products to a youth.

2. Required Signage:

a) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Law, Chapter 270, Section 6, shall be posted conspicuously by the owner or 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 New Bedford 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 which receives the greatest volume of tobacco sales. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Health. For all other cash registers that sell tobacco products, a notice shall be posted that is no smaller than nine (9) square inches.

b) 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 youth 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 that “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be no smaller than 8.5” by 11” and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. New Bedford BOH – November 3, 2011 4

3. Identification: Each person selling or distributing tobacco products 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 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products and nicotine delivery products must be face-to-face.

C. Sales by Employees

No Tobacco Products 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 products and nicotine delivery products and signs a statement provided by the New Bedford Board of Health, 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 laws. Such signed statements, must be made available for inspection, during the permit holder’s normal business hours upon request of an agent of the Board of Health.

D. Tobacco Vending Machines

No person, firm, corporation or other entity shall install or maintain a vending machine to distribute or sell tobacco products or nicotine delivery products in the City of New Bedford.

E. Packaging/ Distribution

1. No person shall distribute or cause to be distributed, any free samples of tobacco products or nicotine delivery products in the City of New Bedford. Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals or attached packaging.

2. It shall be unlawful to remove and commercially sell single cigarettes or other tobacco products or nicotine delivery products from the original manufacturer’s package intended for resale, which package shall state the federally required health warnings. Commercial sale and/or distribution of cigarettes, other tobacco products or nicotine delivery products in a form other than the original factory-wrapped packaging, is prohibited.

3. 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.

F. Self-Service Displays

All self-service displays of tobacco products and nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only exception is 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.

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

No health care institution located in the city of New Bedford shall sell or cause to be sold tobacco products 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.

I. Removal of Notices

Notices provided by the Board of Health in accordance with Section V (B) (2) of this regulation must not be removed from the designated posting locations on the premises of the permit holder. Any permit holder removing said signage shall be in non-compliance of this regulation. New Bedford BOH – November 3, 2011 5

SECTION VI - PENALTIES, FINES, SUSPENSION, REVOCATION AND HEARINGS

A. Sale and/or Distribution of Tobacco Products and Nicotine Delivery Products

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section V of this regulation pertaining to his or her distribution of Tobacco Products and Nicotine Delivery Product Sales Permit. The violator shall receive:

a. In the case of a first violation of Section V., a fine of one hundred dollars (\$100.00) shall be assessed.

b. In the case of a second violation within 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00) shall be assessed and the tobacco Products and Nicotine Delivery Products Sales Permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more violations within a 24-month period, a fine of three hundred dollars (\$300.00) shall be assessed and the T-tobacco Products and Nicotine Delivery Products Sales Permit shall be suspended for thirty (30) consecutive business days.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products and 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.

4. The New Bedford Board of Health shall provide notice of the intent to suspend a Tobacco Products and Nicotine Delivery Products Sales Permit, which shall contain the reasons therefor and establish a date and time for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit-holder or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons therefore in writing.

5. Revocation.

(1) The Board of Health may, after providing opportunity for a hearing, order the revocation of a permit for:

(a) Serious or repeated violation of any of the requirements of this regulation;

(b) Interference with the Board of Health in the performance of its duties; or

(c) A criminal conviction of the permit holder relating to the Sale and /or Distribution of Tobacco Products or Nicotine Delivery Products.

(2) Notice of the intent to revoke a permit shall be given by the Board of Health to the permit holder in writing. The notice shall specify the reason(s) for which the permit is to be revoked and that the revocation shall be imposed at the end of the ten days following service of such notice unless a written request for hearing is filed with the Board of Health by the permit holder or his or her business agent within such ten-day period. If no request for hearing is filed within the ten-day period, the permit shall be revoked. If a written request for a hearing is filed within the ten (10) day period, a hearing shall be scheduled no earlier than seven (7) days after the date of said filing. The permit holder or his or her business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and reasons in writing.

6. All tobacco products and/or nicotine delivery products shall be removed from the retail establishment upon suspension or revocation of the tobacco Products and Nicotine Delivery Products Sales Permit. Failure to remove all tobacco products and/or nicotine delivery products shall constitute a separate violation of this regulation. New Bedford BOH – February 16, 2012

B. Posting of Notices

It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with Section V (B) (2) of this regulation pertaining to their place of business. The permit holder and/or his or her business agent, or persons involved in violation of the provisions of Section V (B) (2) may receive a fine of twenty-five (\$25.00) dollars.

SECTION VII - NON-CRIMINAL CIVIL DISPOSITION

Whoever violates any provision of this Tobacco Control 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.

SECTION VIII - PUBLIC EDUCATION

The Board of Health shall supply retailer education for all new applicants for Tobacco Products and Nicotine Delivery Products Sales Permits at the time of application for permitting. Such education may include distribution of materials to guide retailers in their compliance with this regulation.

SECTION IX - ENFORCEMENT

A. The New Bedford Board of Health and/or its designated agent(s) shall enforce this regulation.

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

SECTION X- SEVERABILITY

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall continue in full force and effect.

SECTION XI - EFFECTIVE DATE

This regulation was initially adopted on August 17, 1999 effective January 3, 2000; amended on April 4, 2000, effective June 11, 2000; amended on October 19, 2004, effective January 1, 2005; amended on November 3, 2011 effective January 12, 2012; amended on February 16, 2012, effective March 1, 2012; amended October 13, 2018, effective October 23, 2018; amended June 4, 2019, effective on June 25, 2019; amended July 2, 2019, effective on July 22, 2019.

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