

NANTUCKET
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TOWN OF NANTUCKET BOARD OF HEALTH

REGULATIONS 77.00

**RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE DELIVERY
PRODUCTS**

77.01 Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac disease, negative birth outcomes, irritation of the eyes, nose and throat;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtain them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station;

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 cigarettes;

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

Whereas 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 youth;

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 2009;

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 smoke cigars in general, indicate that cigar use among youth is underreported;

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 history;

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%;

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

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 quit and high prices deter youth from starting. 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;

Where 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 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;

Whereas the sale of tobacco products and nicotine delivery products are 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 medications, including cessation medications;

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 are 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 Board of health of the Town of Nantucket to regulate the sale of tobacco products and nicotine delivery products.

77.02 Authority:

This regulation is promulgated pursuant to the authority granted to the Nantucket Board of Health by Massachusetts general Laws Chapter 111, Section 31 that “Boards of Health may make reasonable health regulations”.

77.03 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 fillings.

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.

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-cigarettes, 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.

Employer – Any individual, partnership, association, corporation, trust or other organized group of individuals that 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 employees health care providers licensed, or subject to licensure, 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, centers, pharmacies, drug stores, doctors offices and dentists offices.

Minor – Any individual who is under the age of Twenty-one (21).

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-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 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.

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 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 Nantucket Board of Health.

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 forms of payment, dispenses or makes cigarettes, any other tobacco product or nicotine delivery product.

77.04 Tobacco and Nicotine Delivery Products 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 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 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 Nantucket 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

nicotine delivery products at retail shall conspicuously post signage provided by the Nantucket 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 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 “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notice 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 or more 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 that the purchaser is 18 years old or older. Verification is required for any person 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.

77.05 Tobacco and Nicotine delivery Product Sale Permit:

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

2. As part of the Tobacco and Nicotine Delivery product sales permit application process, the applicant will be provided with the Nantucket 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 all employees who will be responsible to tobacco and nicotine delivery product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

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 Nantucket Board of Health.

5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery product.

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 this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be on file in the office of the employer, that he/she has read the regulation 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 this regulation.

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.

77.06 Prohibition of the Sale of Blunt Wraps:

1. No person or entity shall sell or distribute blunt wraps on Nantuck

77.07 Out of package Sales:

1. 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 distributed or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

77.08 Self-Service Displays:

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.

77.09 Vending Machines:

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

77.10 Non-Residential Roll-Your-Own Machines:

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

77.11 Violations:

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 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 dollars (\$100.00)

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) 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 with a 24 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery

product 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 Tobacco and Nicotine Delivery Product sales permit for thirty (30) consecutive days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine 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 Nantucket 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 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 Nantucket Board of Health shall suspend the Tobacco and Nicotine delivery product Sales permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspension, 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 deliver products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine delivery products Sales permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

77.12 Non-Criminal Disposition:

1. 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 violations exists shall be deemed to be a separate offense.

77.13 Enforcement:

1. Enforcement of this regulation shall be by the Nantucket Board of Health or its designated agent(s).
2. Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Nantucket Board of Health or its designated agent(s) and the Board shall investigate.

77.14 Severability:

1. 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.

Effective date:

This regulation shall take effect on July 1 , 2014.

Amended December 13, 2018 (Effective December 28, 2018)