

**Northampton Board of Health
Regulations Affecting Smoking in Public Places
And Youth Access to Tobacco and Nicotine Delivery Products**

AMENDED OCTOBER 19, 2010

SEC 7.1...PURPOSE

Tobacco use is a leading public health risk in the City of Northampton and throughout the United States. There is conclusive scientific evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, and negative birth outcomes, of both the smoker and non-smoker. Environmental tobacco smoke [ETS], which includes both exhaled smoke and the side-stream smoke from burning tobacco, causes the death of 53,000 Americans each year (McGinnis JM, Foege W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212). The Public Health Service's National Toxicology Program lists ETS as a known human carcinogen (US DHHS, 2000, citing California EPA, 1997).

Tobacco use by minors is a continuing problem with grave public health consequences. Annually, 5.8 million packages of cigarettes are sold illegally to minors. According to the Centers for Disease Control, every day 6000 children smoke their first cigarette and three thousand more become daily smokers. More than 80% of all smokers begin to smoke as minors. It is estimated that one third will die prematurely because of their smoking.

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

Accordingly, the Board of Health of the City of Northampton enacts the following regulation as a strict enforceable system to protect and improve public health and welfare by prohibiting smoking or involuntary exposure of vapors from Nicotine Delivery Products such as e-cigarettes in public places and workplaces, and to curtail the illegal sale and access of tobacco products and nicotine delivery products to minors.

SEC 7.2...AUTHORITY

This regulation is promulgated pursuant to the authority granted to the Northampton Board of Health under Massachusetts General Laws Chapter 111, Section 31 that: "Boards of Health may make reasonable health regulations", and Massachusetts General Laws Chapter 40, Section 21D and Section 57.

SEC 7.3...DEFINITIONS

The following words and phrases, whenever used in this regulation, shall be construed as defined in this paragraph.

BAR: An establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises.

BOARD: The Board of Health of the City of Northampton.

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.

CIGARETTE RETAILERS LICENSE: A license issued by the Massachusetts Department of Revenue for tobacco sales.

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. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

EDUCATIONAL FACILITY: Any public or private institution of learning, including but not limited to preschools, primary and secondary schools, and adult learning institutions.

ENCLOSED: A space bounded by walls (with or without windows) from the floor to the ceiling and enclosed by one or more doors

EMPLOYEE: Any individual who performs services for an employer.

Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise 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.

EMPLOYER: Any individual, partnership, association, corporation, trust or other organized group of individuals, including [city/town] or any agency thereof, which uses the services of one (1) or more employees.

HEALTH CARE FACILITY: Any office or institution providing care or treatment of disease, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes of the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

HOTEL: Any commercial establishment that offers lodging to the public, including, but not limited to: motels, hotels, hostels and bed and breakfast establishments.

HUMIDOR: A room or space or enclosed area or container designed for storing cigars or other tobacco products at a constant level of humidity.

IDENTIFICATION: A driver's license, a US military ID, a passport, or other government-issued identification, which displays the photograph and date of birth of the bearer.

INDOOR SPORTS ARENA: Any indoor sports pavilion where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events, including but not limited to: gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar recreational facilities.

LIGHTERS AND MATCHES: Any ignition device used to light a tobacco product.

MINOR: Any individual who is under the age of eighteen (18) years.

OUTDOOR SEATING: Seating on a patio or other outdoor seating portion of restaurant or bar whether or not covered or otherwise enclosed.

PERMIT HOLDER: Any person engaged in the sale or distribution of tobacco products and nicotine delivery products directly to consumers who applies for and receives a Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products or any person who is required to apply for Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products pursuant to these regulations, or his or her business agent.

PERSON: Any individual, firm, partnership, association, corporation, company, trust or organization of any kind including, but not limited to: an owner, operator, manager, proprietor or person in charge of any building, establishment, business, restaurant or retail store; or the employee, agent or designee of any of the foregoing.

PRIVATE CLUB: A not-for-profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a "club license" as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

PUBLIC PLACE: Any enclosed area, which is or may be open to and used by the general public, including, but not limited to:

- a. any building, facility, or vehicle owned, leased, operated or occupied by the City
- b. any area open to the general public including, but not limited to: libraries, museums, theaters, auditoriums, indoor sports arenas and/or recreational facilities
- c. hotel, motel and inn lobbies
- d. public and private educational facilities
- e. shopping malls, retail stores
- f. public restrooms, lobbies, staircases, halls, exits, entrances, elevators accessible to the public
- g. licensed child-care establishments.

PUBLIC TRANSPORTATION: Buses, taxis and other means of transportation available to the general public while operating within the boundaries of Northampton; including indoor and outdoor boarding and waiting areas.

RESTAURANT: Any eating establishment which gives or sells food or beverages to the public, guests, or employees, for on-premises consumption, including, but not limited to coffee shops, cafeterias; and sandwich stands and kitchens, in which food is prepared on premises for serving elsewhere; including, but not limited to catering facilities.

RETAIL STORE: Any establishment, including retail food stores, whose primary purpose is to sell or offer for sale to consumers, but not for resale, any goods, wares, merchandise, articles or other items. "Retail Store" shall not include restaurants as defined herein.

SELF-SERVICE DISPLAY: Any display from which customers may select a tobacco product or nicotine delivery product without assistance from an employee or store personnel in the sale or distribution of tobacco products or nicotine delivery products directly to consumers.

SMOKING: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other tobacco product or nicotine delivery 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 Mass. General Law Ch. 270, §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 PRODUCT: Cigarettes, cigars, blunts, chewing tobacco, snuff, pipe tobacco, bidis, 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 product or nicotine delivery product or lighters or matches.

WORKPLACE: Any enclosed area of a structure or portion thereof, or any business owned or company owned vehicle at which one (1) or more employees perform services for their employer. Workplaces for the purposes of this regulation shall not include those establishments listed in Section 7.6, except as otherwise indicated.

SEC 7.4...POSTING NOTICE OF PROHIBITION

Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "No Smoking" signs or the international "No Smoking" symbol (consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Northampton Board of Health.

SEC 7.5...SMOKING PROHIBITED

- a. No person shall smoke, nor shall any person or employer or other person having control of the premises upon which smoking is regulated by this regulation, or the business agent or designee of such person, permit a person to smoke in any of the following places as defined herein: workplaces, public places, restaurants and bars, including outdoor seating of a restaurant or bar; educational facilities, indoor sports arenas, health care facilities, tobacconists and nursing homes and public transportation, except as otherwise provided in Section 7.6 of this regulation.
- b. In conformance with MGL C.71 SEC. 37 smoking is prohibited at all times in public school facilities, on school buses and school grounds.

SEC 7.6...EXEMPTIONS

- a. Notwithstanding the provisions of Section 7.5 of this regulation, smoking may be permitted in the following places and/or circumstances:
 1. **Private residences** except those portions used as a childcare or health care office when operating as such.
 2. **Private clubs** in compliance with MGL Ch. 270 §22 and 105 CMR 661.100.
- b. Notwithstanding any other provision of this Section 7.6, any owner, operator manager or other person who controls any establishment as described in this section may declare that entire establishment as a non-smoking establishment.

SEC 7.7...CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of the foregoing Section 7.6 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

SEC 7.8...ENFORCEMENT

- a. The Board of Health, its staff, or its designated agents shall implement enforcement of this regulation.
- b. Any citizen who desires to register a complaint under this regulation may initiate investigation with the Board of Health.

SEC 7.9...TOBACCO AND NICOTINE DELIVERY PRODUCT SALES

- a. **Sales to minor** –No person shall sell tobacco products, or nicotine delivery products or lighters or matches or permit tobacco products or nicotine delivery products to be sold to a

minor, or not being the minor's parent or legal guardian, give tobacco products or nicotine delivery products to a minor.

b. **Posting of state law** -- In conformance with, and in addition to, any state law or regulation, including but not limited to, Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, along with any other state-required signage, 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 notices shall be provided by the Massachusetts Department of Public Health and made available from the Northampton Board of Health. The notice required by MGL Ch. 270, §6 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 and 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 Northampton Board of Health shall make available signage for permit holders who sell nicotine delivery products.

c. **Identification:** Each person selling or distributing tobacco products or nicotine delivery products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser is 18 (eighteen) years-old or older. Verification is required for any person under the age of 27 (twenty-seven).

d. **Tobacco or Nicotine Delivery Products Vending Machines Prohibited:** All tobacco vending machines or vending machines dispensing tobacco or nicotine delivery products are prohibited.

e. Permit Requirements for Location and Sales of Tobacco Products or Nicotine Delivery Products

No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within the City of Northampton, without first obtaining a "Permit for Location and Sales of Tobacco Products or Nicotine Delivery Products", issued annually by the Board of Health. Failure to obtain such permit shall constitute a separate violation of this regulation. Only owners of establishments with a permanent, non-mobile location in the City of Northampton are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Northampton.

As part of the tobacco and nicotine delivery product sales permit application process, the applicant will be provided with the Northampton 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 both state laws regarding the sale of tobacco and this regulation.

1. Applicants for the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" shall provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue, if applicable, before a permit is issued.
2. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.
3. The Board shall determine the fee for the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products". All such permits shall be renewed annually by January 1.
4. The "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" shall be displayed at the retail establishment in a conspicuous place.
5. During such time that a "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" has been suspended for violations of this Regulation, all tobacco products and nicotine delivery products shall be removed from public areas of the retail establishment. Failure to remove all tobacco products and nicotine delivery products shall constitute a separate violation of this regulation.

6. A "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" is non-transferable, except a new permit will be issued, upon application to a tobacco or nicotine delivery product retailer who changes locations.
 7. Issuance of the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" shall be conditioned on an applicant's consent to unannounced, periodic inspections of the retail establishment to ensure compliance with this regulation.
 8. No holder shall allow any employee to sell cigarettes or other 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/she has read the regulation and applicable state laws.
 9. A Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products 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.
 10. No new Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- g. Free Distribution of Tobacco Products and Nicotine Delivery Products:** No person shall distribute or cause to be distributed any free samples of tobacco products or nicotine delivery products.
- h. Out-of-Package Sales 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 or any tobacco product or nicotine delivery products not in its original packaging
- i. Self-Service Prohibited:** All self-service displays of tobacco products or nicotine delivery products are prohibited. All retail sales of tobacco, nicotine delivery products, matches or lighters must be face-to face between the seller and the buyer. All humidors including, but not limited to, walk-in humidors must be locked.

SEC 7.10...FINES AND PENALTIES

- a. **Non-Criminal Disposition:** Whoever violates any provision of the regulation, the violation of which is subject to a specific penalty, 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. The enforcing agency shall be the Board of Health or its designees.
- b. **Smoking Prohibited Sections 7.4, 7.5, 7.6**
 1. Any person, employer, business agent or other person having control of the premises, not in compliance with the provisions of this regulation shall be subject to a fine of one hundred dollars (\$100.00) for a first offense, two hundred dollars (\$200.00) for a second offense within twenty-four (24) months of the date of the first offense and three hundred dollars (\$300.00) for a third or subsequent offense within twenty-four (24) months of the date of the previous offense.
 2. Each day of non-compliance with Section 7.4, 7.5, and 7.6 shall be considered a separate and distinct violation thereof.
 3. In accordance with Massachusetts General Law Chapter 40, Section 57, any person or business having control of the premises, not in compliance with the provisions of this regulation, who has neglected or refused to pay any fees

including amounts assessed under the provisions of Section 21D, within twenty-one (21) days of issuance of violation and who does not have a pending court appeal, is subject to suspension or revocation of any local Board of Health license or permit.

c. Tobacco or Nicotine Delivery Product Sales Section 7.9

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 place of business. The violator shall receive:

1. In the case of a first violation of Section 7.9, a fine of one hundred dollars (\$100.00)
2. In the case of a second violation within 24 [twenty-four] months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" shall be suspended for seven (7) consecutive business days.
3. In the case of three violations within a 24 [twenty-four]-month period, a fine of three hundred dollars (\$300.00) and the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" shall be suspended for thirty (30) consecutive business days.
4. In the case of four violations within a 24 [twenty-four] month period, the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" shall be suspended for ninety (90) consecutive days.
5. In the case of five violations within a 24 [twenty-four] month period, the penalty of the Tobacco and Nicotine Delivery Product Sales Permit suspension will be at the discretion of the Board of Health.
6. The issuance of a new "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" on January 1, after five violations will be at the discretion of the Board of Health.
7. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" for thirty (30) consecutive business days.
8. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery product directly to a consumer while his or her "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

d. Hearings

1. The Board of Health shall provide notice of the intent to suspend, revoke or deny a "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products" by certified mail-return receipt requested, to the permit holder.
2. The notice shall contain the reasons for the permit suspension and establish a time and date for a hearing.
3. The date of the hearing shall be no earlier than seven (7) days after the date of said notice.
4. The permit holder shall have an opportunity to be heard at such hearing.
5. The permit holder shall be notified of the Board's decision, and the reasons therefore, in writing, within ten (10) days of the hearing.

6. Failure to appear in person, at the hearing shall act as a waiver to the right to a hearing and the fine, revocation, denial or suspension shall, if applicable, become effective on the date included in the notice.
7. The Northampton Board of Health, after a hearing, may suspend the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products". All tobacco and nicotine delivery products shall be removed from the retail establishment upon suspension of the "Permit for Location and Sale of Tobacco Products or Nicotine Delivery Products".
8. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.
9. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

SEC 7.11 ... SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provisions.

Signatures

Date

Donna Salloom _____

Suzanne Smith _____

Joanne Levin, _____