



# *CITY of NORTHAMPTON*

## *Department of Health and Human Services*

*Merridith O'Leary, RS ~ Commissioner*  
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**Public Health**  
Prevent. Promote. Protect.

November 5, 2024

To: City of Northampton Permitted Tobacco and Nicotine Delivery Product Establishments

From: Northampton Board of Health

**RE: Proposed amendments to the City of Northampton Board of Health Regulation Restricting the Sale of Tobacco Products, Electronic Delivery Systems & Nicotine Delivery Products**

On November 21, 2024 at 5:35PM, the Board of Health is holding a public hearing in regards to amending the City of Northampton Board of Health Regulation Restricting the Sale of Tobacco Products, Electronic Delivery Systems & Nicotine Delivery Products. The proposed amendments include:

- Oral Nicotine Pouch definition
- Restricting the sale of oral nicotine pouches to Tobacconist Stores only

Public Comment will begin at the beginning of the hearing. If you would like to provide public comment, you will be given two minutes, asked to state your name and business affiliation if any. At this time you are free to speak to the Board Members, but they do not reply or engage in a conversation.

Enclosed is a copy of the draft regulation inclusive of proposed amendments, please review carefully as they could affect your business. There will be a public comment session open during the public hearing. This is an opportunity to be heard by the Board and all comments must be limited to two minutes. The link to the meeting is below.

<https://us06web.zoom.us/j/9833577075?omn=84128821603>

Meeting ID: 983 357 7075

One tap mobile

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If you have any questions, please contact the Northampton Health Department (413) 587-1214.

Sincerely,

*Merridith A O'Leary, R.S.*

Merridith O'Leary, R.S.  
Health Commissioner

**Regulation of the City of Northampton Board of Health  
Restricting the Sale of Tobacco Products, Electronic Delivery Systems & Nicotine Delivery  
Products**

Oct 4, 2024 - review

**A. Statement of Purpose:**

It is the intention of the Northampton Board of Health to regulate the sale of tobacco products and nicotine delivery products, as there exists conclusive evidence that tobacco use causes cancer, respiratory and cardiac diseases, negative birth outcomes, and irritations to the eyes, nose and throat (See Appendix A).

**B. Authority:**

This regulation is promulgated pursuant to the authority granted to the City of Northampton Board of Health by Massachusetts General Laws (MGL) Chapter 111, Section 31 and Chapter 270, Section 22(j) that Boards of Health may make reasonable health regulations.

**C. Definitions:**

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise.

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

**Blunt Wrap:** Any product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain loose tobacco or other fillers.

**Bona Fide Purchaser for Value:** A person who exchanges value for property without any reason to suspect irregularities in the transaction.

**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.

**Characterizing Flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, 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, mint, menthol, wintergreen, 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.

**Child-Resistant Package:** Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C. 1471 through 1476.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-

your-own package, not otherwise defined as a cigarette under Massachusetts General Law (MGL), Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in such kits or roll-your-own packages shall be considered “blunt wraps” for the purpose of this regulation.

**Cigarette Retailers License:** A license issued by the Massachusetts Department of Revenue for tobacco sales.

**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.

**Coupon:** Any card, paper, note, form, statement, ticket or other communication 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.

**Egregious:** Conspicuous, glaringly, or flagrantly or remarkably bad.

**Electronic Nicotine Delivery System:** An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

**Employee:** An individual or person who performs a service for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a de minimis amount of time.

**Employer:** Any individual, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the City of Northampton.

**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.

**Flavored Tobacco Product Enhancer:** Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product or vapor product as defined below. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

**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 subject to licensing under this chapter or a retail establishment that provides pharmaceutical goods and services and is subject to regulation by the Board of Registration and Pharmacy. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices. Exempted from state law G.L. c. 112, §61A, but may be included in local regulations: A retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution].

**Identification:** A driver's license, U.S. military ID, passport, or other government issued identification which displays a photograph and a date of birth of the bearer.

**Liquid Nicotine Container:** A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

**Listed or Non-Discounted Price:** The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

**Manufacturer Documentation:** A written document from a manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products.

**Non-Residential Roll-Your-Own (RYO) Machine:** A mechanical device made available for use in a commercial setting (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.

**Oral Nicotine Pouches:** Pre-portioned pouches containing nicotine, flavorings, fillers, and other ingredients, not containing tobacco leaf, intended to be used between the cheek and gum to deliver nicotine, and do not require spitting as traditional smokeless tobacco does.

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, 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, manager, proprietor or person in charge of any establishment, business or retail store.

**Retailer:** A person who operates a retail establishment.

**Rolling Papers** Sheets, rolls, tubes, cones, wraps or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly-smoked herbs.

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

**Schools:** Public or private elementary or secondary schools.

**Smoke Constituent:** Any chemical or chemical compound in mainstream or side stream 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 components of the tobacco product.

**Smoking Bar:** An establishment that: engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the [City/Town] of [city/town]; and (v) maintains a valid license issued by the department of revenue to operate as a smoking bar. “Smoking bars” shall include, but not be limited to, those establishments that are commonly known as “cigar bars”, “hookah bars” and “vape bars.”

**Tobacconist** (Also referred as Adult only Retail Store); A permitted establishment that does not share space with another business, that has a separate entrance not used by any other retailer, that does not sell food, beverages or alcohol that does not sell food or alcohol, that does not have a retail food or food service establishment permit or lottery license, whose only purpose is to sell or offer for retail sale, tobacco products and/or tobacco product paraphernalia, and in which the entry of persons under the age of 21 is prohibited at all times. A tobacconist must maintain a valid permit for the retail sale of tobacco products from the Northampton Board of Health. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment. Each tobacconist must be its own business with its own corporate filings, tax submissions, state and local licenses and permits.

**Tobacco Paraphernalia:** Tobacco paraphernalia” means any object used, intended for use, or designed for use in inhaling or otherwise introducing tobacco products into the human body.

**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, liquid nicotine, “e-liquids” or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component, part, *or accessory* 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, any other tobacco product.

**D. No Tobacco Sales to Persons Under Twenty-One (21) Years Old:**

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.

**2. Required Signage:**

- a. All retail establishments, including tobacconists - shall conspicuously post signage, in the form developed and made available by the Massachusetts Department of Public Health (DPH) and made available from the Northampton Board of Health. Such signage shall include: (i) referral information for smoking cessation resources; (ii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iii) health warnings associated with using electronic nicotine delivery systems; and (iv) except in the case of smoking bars, notice to consumers that the sale of flavored tobacco products are prohibited at all times. Such signage shall be posted conspicuously 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 feet or greater than nine feet from the floor.
- b. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."
- c. All smoking bars and those adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall warn persons entering that smoking and vaping may be present on the premises and provide information concerning the health risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

**3. Identification:**

- a. Each person selling or distributing tobacco products shall first verify the age of *EVERY* purchaser at each time a purchase is made of tobacco products by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
- b. Each person admitting entrance into a Tobacconist shall first verify the age of *EVERY* person entering, each time they enter by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
- c. All retail sales of tobacco products, as defined herein, must be fact-to-face between the seller and the buyer and occur at the permitted location.

**E. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein at retail establishments within the City of Northampton without first obtaining a Tobacco Product Sales Permit issued annually by the Northampton Board of Health which expires each year on December 31st. Only owners of establishments with a permanent, indoor, non-mobile location in Northampton are eligible to apply for a permit and sell tobacco products, as defined herein at the specified location in Northampton.
2. As part of the Tobacco 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 product sales, as defined herein regarding federal, state and local laws regarding the sale of tobacco products, as defined herein and this regulation.
3. Each applicant who sells tobacco products, as defined herein is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue when required by state law, before a Tobacco Product Sales Permit can be issued. Applicants may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. The fee for a Tobacco Product Sales Permit shall be determined by the Northampton Board of Health.
5. A separate permit displayed is required for each retail establishment selling tobacco products as defined herein. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also be displayed conspicuously at the retail establishment.
6. Each City of Northampton Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein 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.

8. A Tobacco Product Sales Permit is non-transferable except as per section 12, below. 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.
9. Issuance of a Tobacco 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. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.
10. 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. **Maximum Number of Tobacco Product Sales Permits**
  - a. The maximum number of Tobacco Product Sales permits allowed in the city of Northampton at any given time is 24. Any permit holder who has failed to renew their permit within 30 days of expiration will be treated as a first-time permit applicant.
  - b. Any permit surrendered, revoked, or not renewed either because a retailer no longer sells tobacco product or because a retailer closes the retail business, shall be returned to the Northampton Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.
12. **Sale of Business**
  - a. Notwithstanding a cap on the total number of permit holders, the seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health as required herein.
  - b. The purchaser shall apply for the transfer of the permit no later than thirty (30) calendar days after said purchase. The purchaser shall not sell tobacco products until the transfer of the permit is approved by the Board of Health; and
  - c. All fines and suspensions of the previous owner must be satisfied prior to issuance of the permit.
13. Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person [under the age of 21] three times within the previous permit year and the time period to appeal has expired.

#### **F. Oral Nicotine Pouches**

Oral nicotine products can only be sold in Tobacconist Stores only.

**G. Tobacconist Establishment Permit Holder:**

1. No person shall operate a Tobacconist Establishment within the City of Northampton without first obtaining a Tobacconist Establishment Permit issued by the Northampton Board of Health.
2. Tobacconist Establishment Permits expire on December 31<sup>st</sup> annually.
3. The Tobacconist Establishment Permit required hereunder shall be a separate permit in addition to the Tobacco Product Sales Permit required, pursuant to Section E, above.
4. A Tobacconist Establishment Permit is non-transferable.
5. The Tobacconist Establishment Permit shall be displayed at the Tobacconist Establishment in a conspicuous place.

**H. Cigar Sales Regulated:**

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents (\$2.90) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original factory wrapped package of two or more cigars unless such package is priced for retail sale at five dollars and eighty cents (\$5.80) or more.
3. This section shall not apply to 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 Northampton; or to a Tobacconist establishment.
4. The Northampton Board of Health may adjust from time to time the amounts specified in the Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

**I. Sale of Flavored Tobacco Products Prohibited:**

1. No person, as defined herein, shall possess, hold, keep, sell, or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein.
2. Retailers must obtain manufacturer documentation certifying that all products possessed, held, kept, sold or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

**J. Nicotine Content in Electronic Nicotine Delivery Systems:**

1. No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to Tobacconist Establishments.

2. Retailers must obtain manufacturer documentation verifying that all electronic nicotine delivery products possessed, held, kept, sold or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

**K. Prohibition of the Sale of Blunt Wraps:**

No person or entity shall sell or distribute blunt wraps in Northampton.

**L. Free Distribution and Coupon Redemption:**

No person shall;

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, through any multi-pack discount (e.g., "buy-two-get-one-free") if the sale reduces the price of each back to less than the listed or non-discounted price.

**M. Out-of-Package Sales:**

1. 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 as defined herein shall possess, hold, keep, sell or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000 and must provide the Northampton Board of Health with a written plan for disposal of said product, including disposal plans for breakage, spillage or expiration of the product.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016, unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 et. seq.
4. No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or a gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

**N. Self-Service Displays:**

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

**O. Vending Machines:**

All vending machines containing tobacco products, as defined herein are prohibited.

**P. Non-Residential Roll-Your-Own Machines:**

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

**Q. Prohibition of the Sale of Tobacco Products by Health Care Institutions:**

No health care institution located in the City of Northampton shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, including but not limited to, a pharmacy or drugstore, shall sell or cause to be sold tobacco products, as defined herein.

**R. Prohibition of the Sale of Tobacco Products by Educational Institutions:**

No educational institution located in the City of Northampton 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.

**S. Incorporation of State Laws and State Regulations**

1. The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to those provisions found at M.G.L. Ch. 270, §§6, 6A, 7, 28, 29 and M.G.L. Ch. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”) and 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”).

**T. Violations:**

It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate G.L. c. 270, §§6, 28, 29 and 105 CMR 665.000, and violations of §D of this regulation, the following penalties apply:

In the case of a first violation, a fine of one thousand dollars (\$1,000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 665.040(d), for three (3) consecutive business days.

- a. In the case of a second violation, a fine of two thousand dollars (\$2,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- b. In the case of three violations, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

- c. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing shall permanently revoke a Tobacco Sales Permit.
- d. Failure to cooperate or interfere with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
- e. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products, as defined herein directly to a consumer while his or her permit is suspended shall constitute a separate violation of this regulation and may be subject to revocation of the Tobacco Product Sales Permit. . Permit holder may also be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

**U. Enforcement:**

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

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

1. The Board of Health shall provide notice of the intent to suspend, revoke, or deny a “Tobacco Product Sales Permit and a Tobacconist Establishment Permit, if applicable.
2. The notice shall contain the reasons for the proposed 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 of Health’s decision and the reasons therefore, in writing, within ten (10) days of the hearing.
6. Failure to appear in person at the hearing, without prior notice and just cause to the Board of Health shall act as a waiver of 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, shall suspend the applicable permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension of the Tobacco Product Sales Permit and the Tobacconist Establishment Permit, if applicable. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
8. Any permit holder who does not pay the assessed fine within twenty-one days after written notice of the Board of Health’s decision upholding the fine may result in further enforcement.

**V. 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.

**W. Effective Date:**

1. This regulation shall take effect on \_\_\_\_\_.
2. Section S of this regulation includes all violations that date back to all violations June 1, 2020.

**Signatures:**

<b>Name</b>	<b>Signature</b>	<b>Date</b>
Joanne Levin		
Cynthia Suopis		
Suzanne Smith		
Janet Grant		

