

Regulation of the City of Northampton Board of Health  
Restricting the Sale of Tobacco Products and Nicotine Delivery Products

**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 smoking 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 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 tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

**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, menthol, mint or wintergreen, 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, 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.

**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 (MGL), Chapter 64C, Section 1, Paragraph 1.

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

**E-Cigarette:** Any electronic device composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**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. Such term shall include a smoke constituent.

**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.

**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 minimus* 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.

**Health Care Institution:** An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

**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.

**Lighters and matches:** Any ignition device used to light tobacco or nicotine delivery products.

**Liquid Nicotine Container:** A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

**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.

**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.

**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 and Nicotine Delivery Product 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.

**Tobacconist:** A permitted establishment whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco, nicotine delivery products and tobacco paraphernalia, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Northampton Board of Health.

**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 and Nicotine Delivery 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 or part 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 or nicotine delivery product.

**D. Tobacco and Nicotine Delivery Product Sales:**

1. The minimum legal sales age in Northampton is 21. Tobacco or nicotine delivery products may not be sold to anyone under the age of 21.
2. Each person selling or distributing tobacco or nicotine delivery products shall verify the age of **EVERY** purchaser during **EACH** transaction by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for **ANY** person attempting to purchase tobacco or nicotine delivery products. 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.

**E. Sale of Favored Tobacco Products Restricted:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, with the exception of a permitted Tobacconist Establishment in which said establishment is also in possession of a valid City of Northampton Tobacco and Nicotine Delivery Product Sales Permit.

**F. Signage and Educational Material:**

Items enumerated below are required to be posted conspicuously by the permit holder so that they may be readily seen by a person standing at or approaching the cash register. The signs 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.

1. In conformance with and in addition 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 notice shall be provided by the Massachusetts Department of Public Health and made available from the Northampton Board of Health.

2. The owner or other person in charge of a retail outlet or other place used to sell tobacco products at retail shall conspicuously post a sign stating that “The sale of nicotine delivery products to anyone under 21 years of age is prohibited.”
3. The permit holder shall post at each point of sale a universal carding sign that states “We Check Identification of All Purchasers of Tobacco and Nicotine Delivery Products,” which will be provided by the Northampton Board of Health.
4. Referral information about smoking cessation will be provided by the Northampton Board of Health and shall be on display at the point of sale.

**G. Tobacco and Nicotine Delivery Product Sales Permit:**

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail establishments within the City of Northampton without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Northampton Board of Health. Only owners of establishments with a permanent, non-mobile location in 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 federal, state and local laws regarding the sale of tobacco and nicotine delivery products and this regulation. 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.
2. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Northampton Board of Health.
3. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.
4. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
5. No Tobacco and Nicotine Delivery Product Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.
6. 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.
7. 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.
8. 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.
9. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits.
  - a. The number of Tobacco and Nicotine Delivery Product Sales Permits issued in Northampton shall be reduced from 36 to one more permit than issue on effective date. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer

intends to sell tobacco products and/or nicotine delivery products. New applicants for permits who are applying at a time when the maximum number of permits has been issued will be placed on a waiting list and will be eligible to apply for a permit on a “first-come, first-serve” basis as issued permits are either not renewed or are returned to the Board of Health.

- b. Any permit not renewed either because a retailer no longer sells tobacco and/or nicotine delivery products, or because a retailer closes the retail business, shall be returned to the Northampton Board of Health.

**H. 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 Permit expires on December 31<sup>st</sup> annually.
3. The Tobacconist Establishment Permit required hereunder shall be a separate permit in addition to the Tobacco and Nicotine Deliver Product Permit required, pursuant to Section G, above.
4. Tobacconist Establishment Permit shall be displayed at the retail establishment in a conspicuous place.
5. A Tobacconist Establishment Permit is non-transferable.

**I. Cigar Sales Regulated:**

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a single cigar.
2. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such packaging is priced for retail sale at five dollars (\$5.00) or more.
3. This section shall not apply to:
  - a. The sale of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
  - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Northampton.
  - c. Tobacconist
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.

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

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

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

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of any tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

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

The sale or distribution of tobacco products and nicotine delivery products in any form other than an original factory-wrapped package is prohibited. No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

**M. Self-Service Displays:**

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.

**N. Vending Machines:**

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

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

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

**P. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions:**

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

**Q. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:**

No educational institution located in the City of Northampton shall sell or cause to be sold tobacco or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

**R. Violations:**

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 violation of this regulation will result in the permit holder incurring the penalties outlined below:

1. First Violation – a fine of one hundred dollars (\$100.00).
2. Second 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.
3. Third violation – 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.
4. Four or more violations – The Board shall permanently revoke the Tobacco and Nicotine Delivery Product Sales Permit.

In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended shall constitute a separate violation of this regulation and may be subject to revocation of the Tobacco and Nicotine Delivery Product Sales Permit.

**S. Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.

**T. 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 "Sale of Tobacco Products or Nicotine Delivery Products Permit" 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 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 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 "Sale of Tobacco Products or Nicotine Delivery Products Permit" if the Board of Health finds that a violation of this regulation occurred. All tobacco and nicotine delivery products shall be removed from the retail establishment upon suspension of the "Sale of Tobacco Products or Nicotine Delivery Products Permit."
8. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

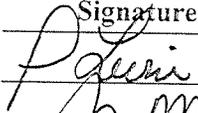
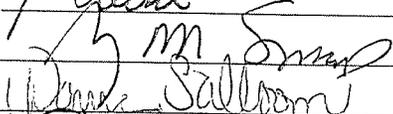
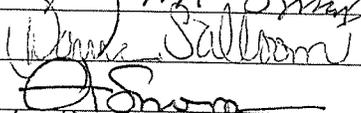
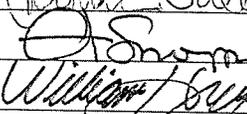
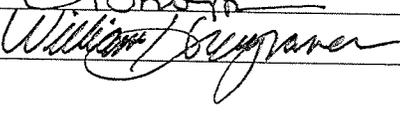
**U. Severability:**

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.

**V. Effective Date:**

This regulation shall take effect on January 1, 2017

**Signatures:**

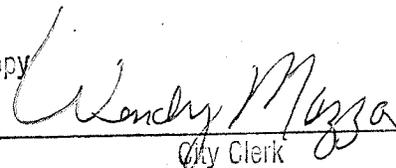
Name	Signature	Date
Joanne Levin, MD - Chair		9/21/16
Suzanne Smith, MD, MPH		9/21/16
Donna Salloom		9/21/16
Cynthia Suopis, PhD		9/21/16
William Hargraves		9-21-2016

A public hearing was held on:

A true copy

Attest:

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 Wendy Muzza  
 City Clerk