

Chapter XIX

Regulation of the Natick Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose

In accordance with the provisions of M.G.L. 111 Sec. 31 and any other applicable law, the Board of Health of the Town of Natick hereby enacts and adopts the following health regulations: WHEREAS, there exists conclusive evidence that tobacco smoke causes cancer, respiratory diseases, various cardiac diseases, negative birth outcomes, allergies and irritations to the eyes, nose, and throat of both the smoker and nonsmoker exposed to secondhand smoke; and WHEREAS, tobacco use by minors is a continuing problem with grave public health consequences because more than 80% of all smokers begin before the age of eighteen and more than 3,000 people begin smoking every day in the United States; and WHEREAS, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of tobacco products to minors; and WHEREAS the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation. NOW THEREFORE BE IT ORDAINED that a strict and enforceable system to prevent access to, and the illegal sale of tobacco products to, minors be enacted as follows:

B. Authority

This regulation is promulgated pursuant to the authority granted to the Natick Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

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

Adult-Only Retail Tobacco Store (also known as "Retail Tobacco Store" in MGL Ch. 270):

An establishment that does not share space with another business, that has a separate entrance, that does not sell food or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Natick Board of Health and applicable state licenses. 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.

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 filler.

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, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, 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, 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, and is not otherwise defined as a cigarette under Massachusetts General Law, 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.

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.

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.

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.

Electronic Nicotine Delivery System: An electronic device, whether for 1-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, electric 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 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.

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, optician/optometrist offices and dentist offices.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

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 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.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, 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 sidestream 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 component of the tobacco product.

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily 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 beverage 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 Natick Board of Health; and (v) maintains a valid permit issue by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

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, electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, electronic nicotine delivery systems or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization regardless of nicotine content in the product. "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 or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under Twenty-One (21) Years Old

1. No person shall sell tobacco products or permit tobacco products to a person under twenty-one (21) years old; or not being the individual's parent or legal guardian, give tobacco products, to a person under twenty-one (21) years old.
2. Required Signage
 - a. All retail establishments, including smoking bars and adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) except in the case of smoking bars, notice to consumers that the sale of flavored electronic nicotine systems 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 retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, 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 the Massachusetts Department of Public Health, 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 warn persons entering that smoking and vaping may be present on the premises, and provide information concerning the health risks associated with second hand smoke and the use of tobacco products, including electronic nicotine delivery systems.
3. Identification: Each person selling or distributing tobacco products, or admitting entrance into a smoking bar or adult-only retail tobacco store, as defined herein, 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 21 years old or older. Verification is required for any person under the age of 27.
4. All retail sales of tobacco products, as defined herein, must be face-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 tobacco products, as defined herein, within the Town of Natick without first obtaining a Tobacco Product Sales Permit issued annually by the Natick Board of Health. Only owners of establishments with a permanent, non-mobile location in Natick are eligible to apply for a permit and sell tobacco products at the specified location in Natick.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Natick 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 regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.
4. The fee for a Tobacco Product Sales Permit shall be determined by the Natick Board of Health annually.
5. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein.
6. 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 products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.
7. A Tobacco Product Sales Permit is non-transferable. 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.
8. 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.
9. A 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.
10. A 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. The violator may request a hearing in accordance with subsection 4 of the Violations section.
11. Maximum Number of Tobacco Product Sales Permits.
 - a. At any given time, there shall be no more than twenty-two (22) Tobacco Product Sales Permits issued in Natick. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco 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, as defined herein. Such applicant may choose to apply for a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store if the current permit holder possessed the same. One Adult-Only Retail Tobacco permit is included in the twenty-two Tobacco Product Sales Permits.

- b. As of the effective date of this regulation, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Natick 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 9(a) shall be reduced by the number of the retired permits.
 - c. At any given time, there shall be no more than one (1) permit issued to Adult-Only Retail Tobacco Stores. Smoking Bars are not permitted in Natick.
12. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco 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, as defined herein.

F. Prohibition of Smoking Bars

Smoking Bars are prohibited in the Town of Natick.

G. Cigar Sales Regulated

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
 - a. The sale or distribution of any single 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 Natick.
4. The Natick Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

H. Sale of Flavored Tobacco Products Prohibited

No person shall 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, except in smoking bars.

I. Nicotine Content in Electronic Nicotine Delivery Systems

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 Adult-Only Retail Tobacco Stores.

J. Prohibition of the Sale of Blunt Wraps

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

K. Free Distribution and Coupon Redemption

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein, 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, 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 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, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only self-service displays that are permissible pursuant to U.S. FDA and Massachusetts Attorney General regulations are displays that are located in Retail Tobacco Stores that ensure that no person younger than twenty-one (21) is present, or permitted to enter, at any time.

N. Vending Machines

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

O. Non-Residential Roll-Your-Own Machines

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

P. Incorporation of State Laws and State Regulation

1. The sale or distribution of tobacco products, as defined herein, must comply with 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 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”).

Q. 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. For violations of the sections of this regulation that incorporate state laws and state regulations, the following penalties apply:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00)

In the case of any first (1st) violation, of a sale to a minor, a fine of one-thousand dollars (\$1,000.00) and suspension of sales permit for three (3) consecutive business days
 - b. In the case of a second violation within thirty-six (36) months of the date of the current 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
 - c. In the case of three or more violations within a thirty-six (36)-month period, 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
2. For violations of all other sections specific to the Town of Natick, 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 Product Sales Permit may be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a 24 month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit may be suspended for thirty (30) consecutive business days.
 - d. The sections specific to the Town of Natick, include:
 1. The maximum number of tobacco sales permits allowed in Natick;
 2. The prohibition of smoking bars;
 3. Minimum pricing on the sale of cigars;
 4. The prohibition of the sale of blunt wraps;
 5. The prohibition of non-residential roll-your-own machines;
 6. The prohibition of vending machines containing tobacco products.
 - e. In the case of further violations or repeated, egregious violations of this regulation within a 24 month period, the Board of Health may revoke a Tobacco Product Sales Permit.
3. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products 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.

5. The Natick Board of Health shall provide notice of the intent to suspend or revoke a Tobacco 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 Natick Board of Health may suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, 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, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

R. 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.

S. Enforcement

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

T. Severability

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

U. Effective Date This regulation shall take effect on June 1, 2020.

Ian L. Wong, MSPH, Chair

Peter A. Delli Colli, DMD, Vice Chair

Donald J. Breda, Clerk