

§ 201-7. Smoking and tobacco and tobacco or nicotine delivery products; youth access regulations. *[Amended 7-11-2001, effective 7-18-2001; 5-29-2002, effective 7-1-2002; 4-26-06, effective 7-1-2006; 9-24-2013, effective 10-4-13]*

A. Statement of purpose. Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than 90% of all smokers begin smoking before the age of 18 (See Preventing Tobacco Use Among Young People, Surgeon General's Report, 1994.); and whereas an estimated 3,000 minors begin smoking every day in the United States (See Cancer Facts & Figures - 1993, American Cancer Society); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore, it is the intention of the Northbridge Board of Health to curtail the access of tobacco products by minors.

B. Authority.

- (1) This regulation is promulgated pursuant to the authority granted to the Northbridge Board of Health by MGL c. 111 § 31 that Boards of Health may make reasonable health regulations.
- (2) These regulations are to be inserted into the Code of Regulations of the Board of Health § 201-7, replacing any and all existing regulations previously adopted by the Board of Health regarding the sale of tobacco and tobacco or nicotine delivery products.

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

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

MINOR -- Any individual who is under the age of 18.

NICOTINE DELIVERY PRODUCT – Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for

other medical purposes and which is being marketed and sold solely for the approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

PERSON -- A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco or nicotine delivery products.

SELF-SERVICE DISPLAYS -- Any display of tobacco or nicotine delivery products which is located such that said products are accessible to customers without assistance from an employee or store personnel.

TOBACCO/TOBACCO PRODUCTS/TOBACCO OR NICOTINE DELIVERY PRODUCTS -- Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff, tobacco in any of its forms, E-cigarettes or any other tobacco or nicotine delivery product.

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 or nicotine delivery product.

D. Permit required.

- (1) No person or entity shall sell or otherwise distribute tobacco or nicotine delivery products within the Town of Northbridge without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Northbridge Board of Health.
- (2) The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Northbridge Board of Health. All such permits shall be renewed annually on July 1.
- (3) Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
- (4) As part of the application process, the applicant will be provided with the Northbridge 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.
- (5) No Tobacco and Nicotine Delivery Sales Permit holder shall allow any employee to sell cigarettes or other tobacco 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 regulations and applicable state laws.

- (6) A separate permit is needed for each retail establishment selling tobacco or nicotine delivery products.
- (7) The Tobacco and Nicotine Delivery Product Sales Permit shall be displayed on the premises in a conspicuous location.
- (8) A Tobacco and Nicotine Delivery Product Sales Permit is nontransferable, except a new permit will be issued to a retailer who changes location.
- (9) Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

E. Posting state law.

- (1) In conformance with and in addition to Massachusetts General Law, c. 270, § 7, a copy of Massachusetts General Laws, c. 270, § 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco or nicotine delivery products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Northbridge Board of Health. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of tobacco product sales in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such 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. For all other cash registers that sell tobacco or nicotine delivery products, a notice shall be attached which is no smaller than nine square inches, which is the size of the sign provided by the Massachusetts Department of Public Health. Such notice must be posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than four feet or more than nine feet from the floor.
- (2) Signs shall be provided by the Massachusetts Department of Public Health and be available from the Northbridge Board of Health.

F. Sales to minors prohibited.

- (1) No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to a minor or, not being the minor's parent or guardian, give tobacco or nicotine delivery products to a minor.

- (2) Each retailer shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser is 18 years of age or older. No such verification is required for any person over the age of 26.
- (3) Each vendor shall each day display prominently the date and year with the explicit provision that anyone born after that day may not legally purchase tobacco or nicotine delivery products.

G. Free distribution.

- (1) No person shall distribute tobacco or nicotine delivery products substantially reduced in price from the prevailing average retail price of the particular brand in the Town of Northbridge. No free or nominal cost tobacco or nicotine delivery products shall be distributed or sold within the Town of Northbridge.
- (2) No person shall distribute any coupon or voucher redeemable for free or nominal cost tobacco or nicotine delivery products within the Town of Northbridge.
- (3) No Tobacco and Nicotine Delivery Product Sales Permit holder shall redeem or honor any coupons or vouchers redeemable for tobacco or or nicotine delivery products within the Town of Northbridge.

H. Packaging.

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

I. Self-service displays.

- (1) All self-service displays of tobacco or nicotine delivery products are prohibited. All humidors, including, but not limited to, walk-in corridors must be locked.

J. Vending machine sales of tobacco or nicotine delivery products.

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

K. Violations and penalties.

- (1) The Board of Health, its agent, or designee, may in accordance with MGL c. 40 § 21D and the Northbridge Code of Bylaws § 1-109A enforce these regulations through the disposition of noncriminal fines as set forth below:

(a) Sale of tobacco or nicotine delivery products to a minor.

- [1] In the case of a first offense: a fine of \$100 and mandatory appearance before the Board of Health within 30 days of violation and mandatory merchant education training.
 - [2] In the case of a second offense within 24 months of the date of the current violation: a fine of \$200 and the Tobacco and Nicotine Delivery Products Sales Permit shall be suspended for a period of 15 consecutive business days and mandatory appearance before the Board of Health within 30 days of the violation.
 - [3] In the case of a third offense within 24 months of the date of the current violation: a fine of \$300 and the Tobacco and Nicotine Delivery Products Sales Permit shall be suspended for a period of 60 consecutive business days and mandatory appearance before the Board of Health within 30 days of the violation.
 - [4] In the case of a fourth and subsequent offenses within 24 months of the date of the current violation: a fine of \$300 and the Tobacco and Nicotine Delivery Product Sales Permit be suspended for a period of one year and mandatory appearance before the Board of Health within 30 days of the violation.
 - [5] Renewal of a Tobacco and Nicotine Delivery Product Sales Permit after a fourth or subsequent offense of these regulations shall be at the discretion of the Board of Health.
- (b) All other provisions of these regulations shall be punishable by a fine of \$50 for the first offense; \$100 for the second offense within 12 months of the date of the current violation; and \$150 for third and subsequent offenses within 12 months of the date of the current violation.
- (2) Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.
 - (3) The Board of Health may, at its discretion, file criminal complaints for violations of this regulation. Said complaints shall be filed with the District Court.

L. Suspension of permit.

- (1) The Board of Health of the Town of Northbridge shall provide written notice to the permit holder of the intent to suspend a permit for the sale of tobacco and nicotine

delivery products. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven business days and no later than 30 business days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.

- (2) The Board of Health, after a hearing, may suspend the tobacco sales permit.
- (3) All tobacco and nicotine delivery products shall be removed from display upon a suspension of the tobacco sales permit. Removal from display shall be accomplished by conducting an inventory of all tobacco and nicotine delivery products in the presence of a representative from the Board of Health and placing all tobacco and nicotine delivery products in a package and then sealing that package. Placement of all sealed packages shall be in a storage area not located within the viewing area of the store.
- (4) When the suspension has been fulfilled, the holder of the permit shall, in the presence of a representative from the Board of Health, inventory all tobacco and nicotine delivery products prior to restocking.
- (5) The establishment shall post a sign supplied by the Board of Health at all customer entrances and at all points of sale, which notify the public that the store is prohibited from selling tobacco and nicotine delivery products until further notice.
- (6) Any sale of tobacco or nicotine delivery products during suspension period or failure to remove tobacco and nicotine delivery products from display in accordance with this regulation shall result in an additional period of suspension of the Tobacco and Nicotine Delivery Products Sales Permit for a period of time equal to permit suspension period currently assessed against the establishment. A mandatory hearing before the Board is necessary for reapplication, with the ultimate decision of issuance of such permit at the sole discretion of the Board of Health.
- (7) Any permit holder who does not pay the assessed fine within twenty-one (21) days from fine issuance may be subject to criminal proceedings.

M. Enforcement. Enforcement of this regulation shall be implemented by the Board of Health of the Town of Northbridge or its designated agent(s).

N. Severability. Each of these regulations shall be construed as separate to the end that if any regulation or sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that regulation and all other regulations shall continue in full force and effect.

O. Effective date. These regulations shall become effective July 1, 2002.