

**HEARINGS, MEETINGS, LICENSES**  
**2-13-12**

## **SAMPLE REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS**

This template includes prohibiting the sale of tobacco in healthcare institutions, including pharmacies, prohibiting the sale of non-regulated nicotine delivery products to minors and prohibiting the single sale of inexpensive cigars.

### **THIS MODEL REGULATION INCORPORATES:**

1. **the minimum standards required pursuant to the Attorney General's regulations on youth access to tobacco;**
2. **Mass. General Law Ch. 270, Sections 6 and 7;**
3. **Boston Public Health Commission language from their 12/2008 amended regulation on tobacco sales in educational institutions and health care institutions; and**
4. **expanded language to include nicotine delivery products and electronic cigarettes.**
5. **an additional retail signage requirement currently being used by the city of Boston.**
6. **language banning the sale of single inexpensive cigars.**

### **INSTRUCTIONS FOR USE:**

1. **Fill in effective date;**
2. **See "Policy Decisions!" - 10 instances. These decisions should only be made after consultation with the Board of Health.**

## **Regulation of the Middleboro Board of Health Restricting the Sale of Tobacco Products & Nicotine Delivery Products**

### **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 eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); 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; **[POLICY DECISION! Two sections need to be removed if not using tobacco ban for pharmacies or educational institutions: and whereas the sale of tobacco products and Nicotine Delivery**

**Products are incompatible with the mission of health care institutions because they are detrimental to the public health and undermine efforts to educate patients on the safe and effective use of medication; and whereas educational institutions sell tobacco products to a younger population, which is particularly at risk for becoming smokers and such sale of tobacco products and Nicotine Delivery Products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms]; now, therefore it is the intention of the Middleboro Board of Health to regulate the access of tobacco products.**

**B. Authority:**

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

**C. Definitions:**

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

**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.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece.

**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.

**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.

**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 subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Minor: Any individual who is under the age of eighteen (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 tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine Delivery Product includes, but is not limited to, e-cigarettes.

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.

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, excluding vending machines.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes, any other tobacco product or nicotine delivery product.

#### D. Tobacco and Nicotine Delivery Product 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 legal guardian, give tobacco or nicotine delivery products to a minor.

#### 2. Required Signage

- a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, 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 Middleboro Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail

establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

- b. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Middleboro board of health that discloses current referral information about smoking cessation. **[POLICY DECISION! This subsection would require an additional signage for each tobacco retailer. This language closely follows the requirement that the city of Boston has been enforcing for over two years.]**
- c. The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating that "The sale of nicotine delivery products to minors under 18 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices 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.

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

4. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer. **[POLICY DECISION! This sentence needs to be amended if you do not completely ban vending machines.]**

E. Tobacco and Nicotine Delivery Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within Middleboro without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Middleboro Board of Health. Only owners of establishments with a permanent, non-mobile location in Middleboro are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Middleboro.

2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Middleboro 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.

3. 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.

4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Middleboro Board of Health annually. All such permits shall be renewed annually by January 1.

5. A separate permit is required for each retail establishment selling tobacco or nicotine delivery products.

6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

8. 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.

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.

10. 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. **[POLICY DECISION! Check with your Board of Health first to see if they want to include this condition.]**

#### F. 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 cigar unless the cigar is contained in an original package of at least four (4) cigars. **[POLICY DECISION! Check with your Board of Health**

first to see if they want to include this section. Only Boston has enacted it and the effective date was February 1, 2012.]

2. This Section shall not apply to:

- a. The sale or distribution of any cigar having a wholesale price of more than two dollars (\$2.00) or a retail price of more than two dollars and fifty cents (\$2.50); and
- 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 Middleboro.
- c. The Middleboro 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.

G. Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products.

H. Out-of-Package Sales:

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.

I. 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.

J. Vending Machines:

All tobacco and/or nicotine delivery product vending machines are prohibited. **[POLICY DECISION! Minimum Mass. Attorney General/U.S. FDA language for tobacco vending machines may be used: The only exception is tobacco vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees. Note that you may**

**have no operating vending machines currently and 141 Mass. cities and towns ban vending machines.]**

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

No health care institution located in Middleboro 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, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

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

No educational institution located in Middleboro 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. **[POLICY DECISION! This would affect colleges and universities. If you have no such entities, you may want to still include this to be proactive. As of 1/1/12, eleven cities and towns have enacted this language. Boston enacted it at the same time as their health care institution tobacco sales ban. If you choose to delete this section, please also delete the Educational Institution definition and the applicable phrase in Section A.]**

M. 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 pertaining to his or her distribution of tobacco and/or nicotine delivery products. For Section D(1), 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 thirty-six (36) months of the date of the current 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. **[POLICY DECISION! If Board wants latitude on permit suspensions: ...a fine of two hundred dollars (\$200.00) shall be assessed and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for up to seven (7) consecutive business days.]**
- c. In the case of three or more violations within a thirty-six (36) month period, 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. **[POLICY DECISION! If Board wants latitude on permit suspensions: ...a fine of three hundred dollars (\$300.00) shall be assessed and the Tobacco and**

**Nicotine Delivery Product Sales Permit may be suspended for up to thirty (30) consecutive business days.]**

2. For Sections D(2), D(3), D(4), E, F, G, H, I, J, K and/or L, the violator shall receive a fine of fifty dollars (\$50.00).

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

4. Any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer without a valid permit or while his or her permit is suspended may be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days and fined accordingly: one hundred dollars (\$100.00) for a first violation; two hundred dollars (\$200.00) for a second violation and three hundred dollars (\$300.00) for a third or subsequent offense.

5. The Middleboro Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefor 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 Middleboro Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred. **[POLICY DECISION! If Board wants latitude on permit suspensions: ...After a hearing, the Middleboro Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred.]** For purposes of such suspensions, 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 and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

N. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

O. Enforcement:

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

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

P. 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.

Q. Effective Date:

This regulation shall take effect on \_\_\_\_\_, 2012.