

**Town of Middleborough
Middleborough Board of Health**

**Tobacco and Nicotine Delivery Product Sales Permit
Regulation Restricting the Sale of Tobacco Products
And Nicotine Delivery Products**

A. Statement of Purpose:

The Board of Health of the Town of Middleborough, Massachusetts, acting under the authority of Chapter 111, Section 31 of the Massachusetts General Laws and such other authority as it possess has enacted the following Regulations Affecting the Sale, Location, Vending and Distribution of Tobacco Products and Nicotine Delivery Products in the Town of Middleborough in the interest and preservation of public health effective July 1, 2012 pursuant to a vote of the Board of Health.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Middleborough 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.

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 or RYO machine from which customers may select or make a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel.

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

Bidis: A thin, often flavored Indian cigarette made of tobacco wrapped in a leaf.

Kreteks: A cigarette product composed of tobacco, ground cloves and other additives.

Snuff: A preparation of finely pulverized tobacco that can be drawn up into the nostrils by inhaling, also called smokeless tobacco.

Blunt Wraps: 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.

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.

Roll-Your-Own (RYO) machine: A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

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 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 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 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 and 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.
(Exemption for approved vending machine.)

E. Tobacco and Nicotine Delivery Product Sales Permit:

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

2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Middleborough 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 about state and local laws regarding the sale of tobacco and nicotine products as indicated in 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 Middleborough Board of Health annually. All such permits shall be renewed annually by January 1. Renewal applications are to be submitted to the Health Department by November 30th prior to expiration of existing permits.

5. A separate permit is required for each retail establishment location 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 location.

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 that is written in the primary language of the employee that he/she has read and understands the regulation and applicable state and local laws, a copy of which will be placed on file in the office of the employer.

8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner/operator 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 and with the understanding that compliance checks may be conducted on a periodic basis.

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.

F. Free Distribution:

No commercial entity shall distribute or furnish or cause to be furnished or distributed without charge, any nicotine delivery products, cigarettes, cigars or other tobacco products in any public place or any event open to the public. A public place means public streets, sidewalks, buildings, parks, playgrounds and other public property or places of public assembly.

G. Out-of-Package Sales:

1. 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.

2. Roll-Your-Own machines are prohibited.

H. 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. The only self-service displays that are permissible are displays located in facilities that ensure that no person younger than eighteen (18) years of age is present, or permitted to enter, at any time.

I. Vending Machines:

All tobacco and/or nicotine delivery product vending machines are prohibited. The only vending machines that are permissible are machines equipped with lock-out devices, located in facilities that no person younger than eighteen (18) years is present, or permitted to enter at any time, and that hold valid liquor licenses. 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 reach of all consumers and in a location accessible only by employees.

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

No health care institution located in Middleborough 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.

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

No educational institution located in Middleborough 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.

L. 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) (Tobacco and Nicotine Delivery Product Sales to Minors Prohibited), each violation will be viewed as a separate violation, the violator shall receive:
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00) and may include up to 7 day suspension 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 hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for up to 15 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 may be suspended for up to thirty (30) consecutive business

days or the Board of Health may revoke the Tobacco and Nicotine Delivery Product Sales Permit.

2. For Sections D.(2) Required Signage, D.(3) Identification, D.(4) Face-to-Face Sales, E. Tobacco And Nicotine Delivery Product Sales Permit G. Free Distribution, H. Out of Package Sales, I. Self-Service Displays, J. Vending Machines, K. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions, and/or L. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions, the violator shall receive a fine of one hundred dollars (\$100.00) for each offense and for each day the offense occurs.

3. Refusal to cooperate with inspections pursuant to this regulation may result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for up to thirty (30) consecutive business days or revocation of the Tobacco and Nicotine Delivery Product Sales Permit after a hearing before the Board of Health.

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 up to thirty (30) consecutive business days and/or fined up to two hundred dollars (\$200.00) accordingly after a Board of Health hearing. Subsequent violations may result in suspension or permanent revocation of the Tobacco and Nicotine Delivery Product Sales Permit, fines and/or legal action.

5. The Middleborough 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 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 Middleborough Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales permit, levy fines, or set conditions on the business operation 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 location 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.

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

M. Enforcement:

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

N. 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.

O. Effective Date:

This regulation shall take effect on July 1, 2012

As approved by the Board of Health on June 18, 2012