

R:1-6 REGULATIONS RESTRICTING YOUTH ACCESS TO TOBACCO

R:1-6.1 Declaration of Purpose.

WHEREAS, tobacco use by minors is a continuing problem with grave public health consequences because more than 82% of all smokers begin smoking before the age of eighteen (18) and more than 3,000 minors begin smoking every day in the United States.

WHEREAS the US 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 by minors.

WHEREAS commercial Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health; whereas commercial Roll Your Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the federal and state excise taxes that are imposed on conventionally manufactured cigarettes (RYO FILLING STATION, www.ryofillingstation.com (February 27, 2012). High excise taxes encourage adult smokers to quit and deter youth from starting (Kenneth E. Warner, Smoking and Health Implications of a Change in the Federal Cigarette Tax, 255, J. AM MED. ASS'N 1028 (1986), Frank J. Chaloupka & Rosalie Liccardo Pacula, The Impact of Price on Youth Tobacco Use, in 14 SMOKING AND TOBACCO CONTROL MONOGRAPHS: CHANGING ADOLSCENT SMOKING PREVALENCE 193 (U.S. Dep't health and Human Services et al. eds., 2001). Therefore, inexpensive cigarettes, like those produced from RYO machines, promote use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco.

Pursuant to Massachusetts General Laws Chapter III, Section 31, the Topsfield Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

R:1-6.2 Authority

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

R:1-6.3 Definitions

For the purposes of this Regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

- a. **ADULT-ONLY RETAIL TOBACCO STORE:** An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Topsfield Board of Health.
- b. **BOARD:** The Board of Health of the Town of Topsfield.
- c. **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.
- d. **COMPONENT PART:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- e. **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.
- f. **DISTINGUISHABLE:** Perceivable by either the sense of smell or taste.
- g. **EMPLOYEE:** Any individual person who performs services for an employer in return for wages or profit.
- h. **EMPLOYER:** An individual person, partnership, association, corporation, trust or other organized group of individuals, including the Town of Topsfield or any agency thereof, which utilizes the services of one (1) or more individual employees.
- i. **ENFORCEMENT OFFICER:** Any individual designated an enforcement officer of these regulations shall be an acting agent of the Board of Health.
- j. **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.

- k. **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.
- l. **INDIVIDUAL:** Any employee, volunteer or any other person who patronizes an area where tobacco products are sold.
- m. **PERSON:** Any person, 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 building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.
- n. **RETAIL STORE:** Any establishment selling goods or articles or products to the public.
- o. **RETAIL TOBACCO STORE:** An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Topsfield Board of Health.
- p. **SELF-SERVICE DISPLAY:** A display from which individual packs or cartons of tobacco products may be selected by a customer without assistance from a clerk or employee.
- q. **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.
- r. **SMOKING BAR:** An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by M.G.L. c. 270, § 22, to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue ("MDOR"). "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."

- s. TOBACCO VENDING MACHINE: Any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon the insertion of coins, trade checks, swipe cards, slips or any other forms of payment.
- t. TOWN: Town of Topsfield
- u. VOLUNTEER: Any individual not compensated for services rendered.
- v. COMMERCIAL 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. Home-use RYO machines are not Commercial Roll-Your-Own machines.
- w. ELECTRONIC CIGARETTE: Any electronic device composed of a mouthpiece, heating element, battery and/or electronic circuits that provides vapor of liquids, regardless of nicotine content, or relies on vaporization of any solid or liquid substance, regardless of nicotine content. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.
- x. TOBACCO/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, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products regardless of the 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.

R:1-6.4 Tobacco Sales to Persons Under the Age of 21 Prohibited

- a. Sale to Persons Under the Age of 21. In conformance with Massachusetts General Laws, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of twenty-one (21) or, not being his parent or guardian gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of twenty-one (21) shall be punished according to the fine schedule set forth in Section 6.5 of this section.
- b. Posting State Law. In conformance with 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 cigarettes at retail. The notice to be posted shall be provided

by the Massachusetts Department of Public Health and made available from the Board of Health of the Town of Topsfield. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single cigarette package sales in such a manner so that it may be readily seen by a person standing 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 (4) feet or greater than nine (9) feet from the floor. For all other cash registers that sell cigarettes, a notice shall be attached which is no smaller than nine (9) square inches, 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 (4) feet or more than nine (9) feet from the floor.

c. Permit for Location and Sales of Tobacco.

1. After the effective date of this Regulation, all retailers who are required to hold a state license to sell cigarettes or other tobacco products, will be required to hold and maintain a valid, "Permit for Location and Sales: from the Town of Topsfield for each location at which tobacco products are sold.
2. After the effective date of this Regulation, The Board of Health of the Town of Topsfield will issue a "Permit for Location and Sales" that will specify the name, address and approved location per the Board of Health of the Town of Topsfield or their designated agent(s) for retailers who sell tobacco products.
3. After receiving the permit, the merchant will receive signs made that state, "Sale of cigarettes or any tobacco products to persons under age twenty-one (21) is illegal, M.G.L. Chapter 270, Sections 6 & 7."
4. The term of the permit shall be one year.
5. The fee for the one year tobacco retailer's "Permit for Location and Sales" is forty-five dollars (\$45.00) for each tobacco retail location.
6. A "Permit for Location and Sales" is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations and pays the required fee.
7. During such time that a "Permit for Location and Sales" of tobacco products has been suspended for violations of this Regulation, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined according to Section 6.5 until said permit is reinstated by the Board of Health of the Town of Topsfield or its designated agent(s).
8. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 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.

- d. Tobacco Vending Machines. After the effective date of this Regulation, it shall be unlawful to sell or distribute any tobacco product through a cigarette vending machine or any other device used in the sale or distribution of tobacco products within the town of Topsfield.
- e. Out-of-Package Sales Prohibited. No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes. Retailers are prohibited from opening any cigarette package to sell or distribute individual cigarettes. 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. Pursuant to 940 CMR 21.04 (1) (b), no person shall break or otherwise open any tobacco product's package to sell or distribute any number of unpackaged or repackaged tobacco product that is smaller than the smallest package distributed by the manufacturer for individual consumer use with the exception of cigars as pursuant to CMR 946 § 21.02. 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. Pursuant to 940 CMR 21.05, no person shall sell or distribute nicotine in a liquid or gel substance in Topsfield after February 28, 2019 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standards for special packaging as set forth in 15 U.S.C. §§ 1471 through 1476 and 16 CFR § 1700 et seq.
- f. Self-Service Display Restrictions. No retailer shall sell or offer for sale tobacco products by means of a self-service display. All humidors including, but not limited to, walk-in humidors must be locked.
- g. Free Distribution of Tobacco Products. No retailer shall cause to be distributed any free samples or tobacco products.
- h. Sales by Employees. Each retailer shall verify by means of photographic identification containing the bearer's date of birth, that no person purchasing tobacco products is younger than 21 years of age. Verification is required for any purchaser under the age of 40.
- i. Commercial Roll-Your-Own machines. All commercial Roll-Your-Own machines are prohibited.

R:1-6.5 Penalties

1. Any person who violates any section of this Regulation may be subject to the following fines and penalties:
 - a. Fifty dollar (\$50.00) fine for the first offense.
 - b. One hundred dollar (\$100.00) fine for the second offense within 24 months of the date of the current violation and/or suspension of any license issued by the Board of Health for a period of seven (7) consecutive business days.
 - c. Two hundred dollar (\$200.00) fine for third offense within a 24-month period, and for every other offense within a 24-month period, and/or suspension of any license issued by the Board of Health for a period of thirty (30) consecutive business days.
 - d. Removal of vending machine.
2. The Board of Health of the Town of Topsfield shall provide written notice to the permittee of the intent to suspend a license issued by the Board of Health. The notice shall contain the reasons for the suspension and establish a date and time for the hearing. The date of the hearing before the Board of Health shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.
3. Non-Criminal Disposition
 - a. Whoever violates any provision of this Regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.
 - b. Each day on which any violation exists shall be deemed a separate offense.
 - c. Penalty: \$50.00 fine for first offense
 \$100.00 fine for second offense
 \$200.00 fine for third offense

R1-6.6 Enforcement

Enforcement of this Regulation shall be implemented by the Board of Health of the Town of Topsfield or its designated agent(s). The designated enforcement officers of these regulations shall be the agents of the Board of Health. Said agents, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof at any time during office hours, not later than twenty (20) days

after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The notice shall be served and all procedures followed as set out in said Massachusetts General Laws, Chapter 40, Section 21D, as amended.

Any citizen who desires to register a complaint of non-compliance under the Regulation may do so by contacting the Board of Health of the Town of Topsfield or its designated agent(s).

R:1-6.7 Severability.

If any paragraph or provision of this Regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provision being in force.

R:1-6.8 Effective date. This regulation shall take effect on 3/31/19.

R:1-6.9 Prohibition of Smoking Bars.

Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is hereby prohibited in a smoking bar.

R:1-6.10 Prohibition of Smoking in Retail Tobacco Stores.

Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is hereby prohibited in retail tobacco stores.

R:1-6.11 Prohibition of the Sale of Tobacco Products by Health Care Institutions: No health care institution located in Topsfield shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

R:1-6.12 Sale of Flavored Tobacco Prohibited. No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.