

Regulation of the Amherst Board of Health

Restricting Youth Access and Exposure to Tobacco and Nicotine Delivery Products

I. Statement of Purpose:

Despite state laws prohibiting the sale of tobacco products to youth, access by youth to tobacco and nicotine delivery products is a major problem. In the interest of public health, it is the policy of the Town of Amherst to discourage youth from accessing and experimenting with tobacco and nicotine delivery products.

The purpose of this regulation is to regulate establishments that sell tobacco and nicotine delivery products in a way that will:

1. reduce the number of youth who use tobacco and nicotine delivery products;
2. prevent the sale of tobacco and nicotine delivery products to individuals under the age of 21;
3. educate shop owners and employees who sell tobacco and nicotine delivery products within the Town of Amherst; and
4. reduce life-long consequences associated with tobacco and nicotine delivery product use.

The Massachusetts Supreme Judicial Court has held that "...[t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means" [*Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949)]. Now, therefore the Amherst Board of Health intends to regulate the sale of tobacco and nicotine delivery products.

II. Supporting Evidence:

Tobacco use remains the number one cause of preventable disease, disability and death in the United States. Approximately 34 million American adults currently smoke cigarettes. Most tobacco product use begins during adolescence. In recent years, tobacco products have evolved to include various smoked, smokeless and electronic products (Adams, 2020; Wang et al, 2019).

Cigarette smoking harms nearly every organ of the body, causes cancer, cardiac and respiratory diseases, stroke, adverse birth outcomes, and reduces the health of smokers in general. Tobacco use is the primary cause of premature death in the United States. Smoking cigarettes causes more Americans to die each year than alcohol, car accidents, HIV, guns and illegal guns combined. Smoking depresses pulmonary immune function and is a risk factor contracting other infectious diseases and more severe outcomes among people who become infected. Smoking is a risk factor for the progression of COVID-19, with smokers having higher odds of COVID-19 progression than never smokers (Patanavanich and Glantz, 2020; WHO, 2020; Adams, 2020; CDC, 2015; American Cancer Society, 2018).

In 2019, an estimated 53.3% of high school students (8.0 million) and 24.3% of middle school students (2.9 million) reported having ever tried a tobacco product. Recent increases in the use of e-cigarettes, especially JUULs, among youth in the US have risen exponentially. Surgeon General Jerome Adams declared vaping among youth in the U.S. an epidemic (Adams, J., 2018; CDC, 2019; Wang, et al, 2019).

The U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction (FDA,2011). The U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol-flavored tobacco products increased nicotine dependence and decreased success in smoking cessation (CTCRE, UCSF 2011).

E-cigarette aerosol is not harmless; a typical e-cigarette cartridge (pod) contains as much nicotine as a pack of 20 cigarettes. Nicotine exposure during adolescence can harm the developing brain and have potentially severe consequences for teen addiction, cognition and emotional regulation manifested in learning, memory, and attention problems. In addition to nicotine, the aerosol from e-cigarettes can potentially expose both users and bystanders to other harmful substances, including toxic compounds (e.g. formaldehyde, acetaldehyde, nitrosamines, cadmium, nickel, tin, and lead), volatile organic compounds (VOCs), and ultrafine particles that can be inhaled deeply into the lungs (Berry, K.M., Fetterman, J.L., et al, 2019; Adams, 2018; Andrews, J.C., et al, 2018; Yuan, M., Cross, S., Laughlin, S. & Leslie, F., 2015).

Many e-cigarettes come in flavors that make them more appealing to teens. Flavor additives can create acetyls when mixed with e-liquids; when inhaled, these acetyls irritate the lungs in ways similar to how asthma and inhaling smoke or fumes can bother the lungs. Some chemicals used to make certain flavors contain different levels of diacetyl that has been linked to a severe lung disease called bronchiolitis obliterans (Adams, J., 2018; Duke University Medical Center, October 18, 2018).

Nicotine can prime the brain and increase the risk of future addiction to other drugs and alcohol. The use of e-cigarettes may help spawn even more opioid addiction. It is known that nicotine is as addictive as heroin, so once hooked, most young e-cigarette users will become long-term users. (Berry, K.M.' Fetterman, J.L., et al, 2019; Adams, 2018; Drazen, Morrissey, & Champion, 2019)

III. Authority:

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

IV. Definitions For 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 (which includes nicotine delivery products) and tobacco paraphernalia, and 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 as required by the Amherst Board of Health.

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 to be filled by the consumer with loose tobacco or other fillers (regardless of content) and not to be used by the consumer as a final product.

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.

Child-resistant packaging: packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C. 1471 to 1476, inclusive.

Cigar: Any roll of tobacco that is wrapped in leaf of 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 issue 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

Electronic Nicotine Delivery System: An electronic device, whether for one-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, electronic 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 combustible 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 accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a 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.

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.

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 regulations by the board of registration in pharmacy. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid nicotine container: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Non-age Restricted Retail Establishment (NAR): a retail establishment that holds a Town of Amherst Tobacco Product Sales Permit and a Massachusetts Department of Revenue license for the sale of tobacco products, but does not restrict entry to people under the age of 21. These include but are not limited to, convenience stores, gas stations, liquor stores, bodegas, supermarkets and other similar businesses.

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.

Schools: Public or private elementary or secondary schools.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Smoke Constituent: Any chemical or chemical compound in mainstream or side stream 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 beverages that is incidental to the sale of tobacco products and prohibits the 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 town

of Amherst; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited 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, or electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products, 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.

Valid Government Issued Identification (ID): a valid Massachusetts Driver's License or out-of-state drivers' license; a valid Massachusetts Liquor ID Card of a Massachusetts ID Card (both issued by the Registry of Motor Vehicles); a valid Military ID; a valid passport issued by the United States or from a country recognized by the US; or a US Immigration Card.

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 identified herein

V. Regulations:

1. The town of Amherst permits tobacco sales in two categories of retail establishments:

- a. Non-age Restricted Retail Establishments, as defined herein and
- b. Adult-Only Tobacco Retail Stores, as defined herein.

2. The town of Amherst prohibits the establishment of Smoking Bars.

3. Regulations that apply to BOTH Non-age Restricted Retail Establishments AND Adult-Only Tobacco Retail Stores

- a. No person shall sell or provide a tobacco product, as defined herein, to a person **under twenty-one (21) years of age.**
- b. **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 enhanced, as defined herein.
- c. **Tobacco Product Sales Permit:**
 - 1) No person shall sell or otherwise distribute tobacco products, as defined herein, within the town of Amherst without first obtaining a Tobacco Product Sales Permit issued annually by the Amherst Board of Health. Only owners of establishments with a permanent, non-mobile location in Amherst are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Amherst.

- 2) As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Amherst regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing 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 License issued by the Massachusetts Department of Revenue, when required by state law, before a Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
- 4) A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein.
- 5) The fee for a Tobacco Product Sales Permit shall be determined by the Amherst Board of Health annually.
- 6) 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.
- 7) Issuance of a Tobacco Product Sales Permit shall be conditioned on the applicant's consent to unannounced, periodic inspections of his/her/their retail establishment to ensure compliance with this regulation.
- 8) 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 the permit holder has not satisfied any outstanding permit suspensions.
- 9) A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product, as defined herein, 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.

10) Number of Tobacco Product Sales Permits.

- a) The number of Tobacco Product Sales Permits issued in Amherst shall not exceed eighteen (18). No existing 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 need to come before the Amherst Board of Health for a hearing to determine whether the lapsed Tobacco Product Sales Permit shall be renewed.
- b) Any permit not renewed either because a retailer no longer sells tobacco products or because a retailer closes the retail business, shall be returned to the Amherst Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under subsection A (above) shall be reduced by the number of retired permits.

- c) Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the applicant intends to sell tobacco products, as defined herein.
- d) 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 pre-school, 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.

d. Required Signage:

All retail establishments, including 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) 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 4 feet or greater than 9 feet from the floor.

e. Buyer Identification:

Each person selling or distributing tobacco products, or admitting entrance into an adult-only retail tobacco store, 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.

f. Face-to face sales:

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.

g. Tobacco Handlers:

- 1) No Tobacco Product Sales Permit holder shall allow anyone under the age of 21 to sell tobacco products.
- 2) No Tobacco Sales Permit holder shall allow any employee over the age of 21 to sell tobacco products until such employee:
 - a) reads these regulations and the Massachusetts Department of Public Health Tobacco Retailer Guidance information (attached or found at <https://www.mass.gov/doc/tobacco-retailer-guidance-105-cmr-665/download>)
 - b) passes the Amherst Board of Health Tobacco Handlers Quiz

- 3) The Tobacco Sales Permit holder must keep on file a copy of each employee's signed Tobacco Handlers Quiz.

h. Free Distribution and Coupon Redemption prohibited:

No person shall:

- 1) distribute or cause to be distributed, any free samples of tobacco products as defined herein.
- 2) accept or redeem any coupon that provides any tobacco product as defined herein without charge or for less than the listed or non-discounted price.
- 3) Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g. "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

i. Out-of-Package Sales:

- 1) 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.
- 2) Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Amherst Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
- 3) All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."
- 4) No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailers.

j. Incorporation of Attorney General Regulation 940 CMR 21.00:

- 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").

4. Regulations specific to Non-Age Restricted Retail Establishments

No Non-age Restricted Retail Establishment shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter.

5. Regulations specific to Adult-Only Retail Tobacco Stores

- a. **Restricted Entry:** The owner or other person in charge of an Adult-only Tobacco Store is responsible for preventing any person under the Minimum Legal Sales Age from entering the Retail Establishment.
- b. **Required Signage:** All Adult-only 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 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 *"No person younger than 21 years old is permitted on the premises at any time."*
- c. **Location:** A Tobacco Sales Permit for an Adult-Only Retail Tobacco Store shall not be issued to an applicant for a retail location within fifty (50) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

VI. Additional Town-Wide Regulations

A. Cigar Sales regulated

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail at five dollars (\$5.00) or more.
3. This section shall not apply to 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 Amherst.
4. The Amherst 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.

B. Prohibition of the Sale of Blunt Wraps:

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

C. 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.

D. Vending Machines:

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

E. Non-Residential Roll-Your-Own Machines:

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

F. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Amherst shall sell or cause to be sold tobacco products, as defined herein, within its buildings, facilities or grounds. 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.

G. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Amherst shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

H. Tobacco Rolling Papers:

1. It is illegal to sell tobacco-rolling papers to a person under the age of 21.
2. A person who sells tobacco-rolling papers to a person under the age of 21 shall be punished by a fine of \$25.00 for the first offense, \$50.00 for the second offense, and \$100.00 for a third or subsequent offense.

VII. Violations:

A. 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:

1. In the case of a first violation, a fine of one thousand dollars (\$1,000) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
2. In the case of a second violation within 36 months of the date of the current violation, a fine of two thousand dollars (\$2000.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
3. In the case of three or more violations within a 36-month period, a fine of five thousand dollars (\$5000.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

B. For violations of all other sections specific to the Town of Amherst, the violator shall receive:

1. In the case of a first violation, a fine of one hundred dollars (\$100.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
2. In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.

3. In the case of three or more violations within a 36-month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
 4. In the case of four violations or repeated, egregious violations of this regulation within a 36-month period, the Amherst Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.
 5. The sections specific to the Town of Amherst include:
 - a. The maximum number of tobacco sales permits allowed in Amherst
 - b. The prohibition of smoking bars.
 - c. The minimum pricing on the sale of cigars
 - d. The prohibition of the sale of blunt wraps.
 - e. The prohibition of the sale of tobacco products in educational institutions.
 - f. The prohibition of non-residential roll-your-own machines.
 - g. The prohibition of tobacco product vending machines.
 - h. The prohibition of the sale of tobacco products in health care institutions.
 - i. The prohibition of self-service tobacco product displays.
 - j. The Tobacco Handler's Quiz.
- C. Failure 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.
- D. 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. Multiple tobacco product sales permit suspensions shall not be served concurrently.
- E. The Amherst Board of Health shall provide notice of the intent to suspend or revoke a Tobacco 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 in writing. After a hearing, the Amherst Board of Health shall 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 of Health 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.

VIII. 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 where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.

IX. Separate Violations: Each day any violation that exists shall be deemed to be a separate offense.

X. Enforcement:

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

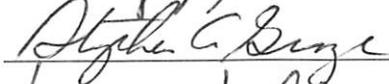
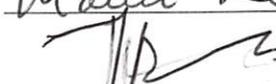
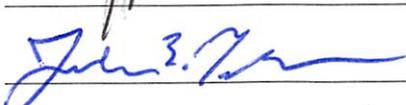
XI. Severability:

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.

XII. Effective Date:

This regulation shall take effect on **January 1, 2021.**

XIII. Signatures

Name	Signature	Date
Nancy Gilbert (chair)		<u>8/24/2020</u>
Stephen George		<u>8/19/2020</u>
Maureen Millea, M.D.		<u>8/19/2020</u>
Timothy Randhir		<u>8/19/2020</u>
John Tobiason		<u>8/25/2020</u>

Adopted by the above on August 13, 2020 at a posted Board of Health Meeting

A public hearing was held on November 14, 2019.

Effective date: January 1, 2021

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