

**TOWN OF GRAFTON REGULATION
RESTRICTING THE SALE OF TOBACCO PRODUCTS '12**

SECTION I - Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes and irritations to the eyes, nose and throat; 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)); 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.); whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; whereas despite State laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; whereas educational institutions sell tobacco products to a younger population, which is particularly at risk for becoming smokers and such sale of tobacco products is 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 Grafton Board of Health to regulate the access to tobacco products in Grafton.

SECTION 2 -Authority:

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

SECTION 3 - Definitions:

For the purpose of this regulation, the words below 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, not approved by the United States Food and Drug Administration, 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 any liquid or solid nicotine. 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, professional school, vocational school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and

independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of compensation.

Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other education institution or other legal entity, whether public, quasi-public, private or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the Town of Grafton.

Minor: Any individual who is under the age of eighteen (18).

Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco product substitute or otherwise 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 product 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 products directly to consumers who applies for and receives a tobacco products sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

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 products or Nicotine Delivery Products.

SECTION 4 - Sales to Minors Prohibited:

1. No person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco products or nicotine delivery products to a minor.
2. All retail sales of tobacco products or Nicotine Delivery Products must be face-to-face between the seller and the buyer.

3. Identification: Each person selling or distributing tobacco products or nicotine delivery products shall verify the age of the purchaser by means of 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. 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 Grafton 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.

5. 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.

SECTION 5 - Sales Permit:

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

2. As part of the Tobacco Products and Nicotine Delivery Products Sales Permit application process, the applicant will be provided with the Grafton 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 products and Nicotine Delivery Products sales regarding both State laws and regulations regarding the sale of tobacco products and this regulation.

3. Each applicant who sells tobacco products and Nicotine Delivery Products is required to provide proof of a current tobacco products sales license issued by the Massachusetts

Department of Revenue before a Tobacco Products and Nicotine Delivery Products Sales Permit can be issued.

4. The fee for a Tobacco Products and Nicotine Delivery Products Sales Permit shall be determined by the Grafton Board of Health annually. All such permits shall be renewed annually by the 31st of December of each year.
5. A separate permit is required for each retail establishment selling tobacco products or Nicotine Delivery Products.
6. Each Tobacco Products and Nicotine Delivery Products Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco Products and Nicotine Delivery Products Sales Permit holder shall allow any employee to sell cigarettes, other tobacco products, or Nicotine Delivery Products until such employee reads this regulation and State laws and regulations regarding the sale of tobacco products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read this regulation and applicable State laws and regulations.
8. A Tobacco Products and Nicotine Delivery Products Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products 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 Products and Nicotine Delivery Products 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 Products and Nicotine Delivery Products 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.

SECTION 6 - Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or Nicotine Delivery Products.

SECTION 7 - Out-of-Package Sales:

No person may sell or cause to be sold or distributed or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

SECTION 8 - 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.

SECTION 9 - Vending Machines:

All tobacco products and/or Nicotine Delivery Product vending machines are prohibited.

SECTION 10 - Prohibition of the Sale of Tobacco or Nicotine Delivery Products by Educational Institutions

No educational institution located in Grafton shall sell or allow 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.

SECTION 11 - Enforcement:

The penalty for selling without a valid permit shall be \$300.00.

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 product and/or Nicotine Delivery Products. The violator shall receive:

a. In the case of the first violation of these Regulations, the permit holder shall be fined one hundred dollars (\$100.00).

b. In the case of the second violation of these Regulations, within a twenty-four (24) month period, the permit holder shall be fined two hundred dollars (\$200.00) and the permit shall be suspended for seven (7) consecutive days.

c. In the case of three or more violations of these Regulations within a twenty-four (24) month period the permit holder shall be fined three hundred dollars (\$300.00) and the permit shall be suspended for a minimum of ninety (90) consecutive days.

The Board of Health shall provide written notice to the permit holder of the intent to impose penalties. The notice shall contain the reasons for the penalties and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of notice. The permit holder shall have an opportunity to be heard and shall be notified of the Board of Health's decision and reasons in writing.

All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco products sales permit. Failure to remove shall constitute a separate violation of the Regulation and shall be punishable by a fine of one hundred dollars (\$100.00) per business day.

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

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of Tobacco Products or Nicotine Delivery Products directly to a consumer 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.

Violations shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.

4. This Regulation shall be enforced by the Board of Health and its Agent(s).

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

SECTION 12 - 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.

SECTION 13 - 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.

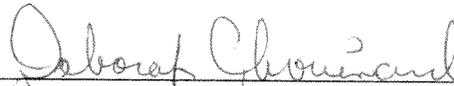
SECTION 14 - Effective Date:

This Amended Regulation shall be effective as of **MARCH 1, 2012**.

GRAFTON BOARD OF HEALTH:



Karen Gwozdowski Gauvin, Chairman



Deborah A. Chouinard, Vice Chairman



Ernest W. Peters, Clerk



Richard J. Kirejczyk, Member



Philip E. Dumas, Member

A true copy,
Attest:



Maureen A. Clark, Town Clerk