

SECTION 202-1 – PURPOSE

In order to protect the health, safety and welfare of the public, including but not limited to its younger population, by restricting the sale of and public exposure to tobacco and e-cigarette products known to be related to various and serious health conditions such as cancer, this by-law shall limit and restrict the sale of and public exposure to tobacco and e-cigarette products within the Town of Bellingham.

SECTION 202-2 – DEFINITIONS

- a. Tobacco - Any product containing, made, or derived from tobacco 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 or snuff. "Tobacco" 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.
- b. 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, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, or under any other product name.
- c. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.
- d. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco or e-cigarette products by self-service, with or without assistance by a clerk or operator.
- e. Self-Service Display - Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.
- f. Minor - A person under twenty-one years of age.
- g. Employee - An individual who performs services for an employer.
- h. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.
- i. Workplace - An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces

rented to or otherwise used by the public, where the employer has the right or authority to exercise control over the space.

j. Food Service Establishment - An establishment having one or more seats at which food is served to the public.

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 Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

l. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

m. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

n. Retail Establishment - any store that sells goods or articles of personal services to the public.

o. 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 or intended to be filled by the consumer with loose tobacco or other fillers.

p. 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 or e-cigarette products 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 use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

q. Component part - Any element of a tobacco or e-cigarette products, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

r. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco or e-cigarette products during the processing, manufacturing or packaging of the tobacco or e-cigarette products. Such term shall include a smoke constituent.

s. Distinguishable - Perceivable by either the sense of smell or taste.

t. **Smoke Constituent** - Any chemical or chemical compound in mainstream or secondhand tobacco smoke that either transfers from any component of the tobacco or e-cigarette product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco or e-cigarette product.

u. **Flavored tobacco or e-cigarette product** - Any tobacco product or e-cigarette 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 or e-cigarette products, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco or e-cigarette products, that such tobacco or e-cigarette products has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco or e-cigarette products is a flavored tobacco or e-cigarette products.

v. **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 and/or e-cigarette 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 Bellingham Board of Health.

w. **Cigar** - Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

SECTION 202-3 – REGULATED CONDUCT

a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Bellingham must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Bellingham must designate 100% of individual dwelling units or rooms as non-smoking.

(3) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Bellingham School grounds.

(4). Such signage shall be erected to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility.

(3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee to accept a designated smoking position as a condition of continued employment by the employer.

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work.

(7) E-cigarette Usage – Locations Prohibited (1) In addition to the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 202-3 of this by-law. The Health Agent and/or their designee(s) shall enforce this section in accordance with Section 202-6.

SECTION 202-4 - POSTING REQUIREMENTS

Every person having control of a premise where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

tobacco or e-cigarette products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

h. Required Signage

1. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by the Town of Bellingham that discloses current referral information about smoking cessation.
2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone born on or after 1/1/2004 is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they 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 eight (8) feet from the floor.

i. Tobacco Sales

1. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this by-law and federal and state laws regarding the sale of tobacco and e-cigarette and signs a statement, a copy of which will be placed on file in the office of the employer, that they have read the regulation and applicable state and federal laws.
2. Identification: Each person selling or distributing tobacco products, as defined herein, 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 was born prior to 1/1/2004.
3. All retail sales of tobacco or e-cigarette products within the Town of Bellingham must be face-to-face between the seller and the buyer and occur at the permitted location.
4. Original Cigar Package Price - All single cigars shall be sold for no less than two dollars and fifty cents (\$2.50). 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 sale at \$5.00 or more. 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 Bellingham.

5. No entity shall sell or distribute or cause to be sold or distributed any flavored tobacco or e-cigarette products, except in retail tobacco stores.
6. No entity shall sell or distribute or cause to be sold or distributed blunt wraps.

SECTION 202-6 - VIOLATIONS AND PENALTIES

- a. Any person who violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of \$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Health Agent or their designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section.
- b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of \$100 for a first offense, \$250 for a second offense, and \$500 for a third or subsequent offense.
- c. Employees who violate any provision of Section 202-3(b) shall be punished by a fine of \$100 per day for each day of such violation.
- d. Any entity violating any other section of this by-law shall receive a fine of \$500.00 for each offense.
- e. Violations of this by-law may be dealt with in a noncriminal manner as provided in Part 1 Chapter 1 Article III Section 1-8 of the Town by-laws.
- f. Each calendar day an entity operates in violation of any provision of this by-law shall be deemed a separate violation.
- g. No provision, clause or sentence of this section of this by-law shall be interpreted as prohibiting the Bellingham Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

SECTION 202-7 – SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.