

**Regulation of the Amherst Board of Health:
Restricting the Sale of Tobacco and Vape Products
January 15th 2025, DRAFT**

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 restrict the sale of tobacco and vape products.

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

- A. Reduce the number of youth who use tobacco and vape products;
- B. Prevent the sale of tobacco and nicotine delivery products to individuals under the age of 21;
- C. Educate shop owners and employees who sell tobacco and nicotine delivery products within the Town of Amherst; and
- D. 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:

There exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat.ⁱ

The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroinⁱⁱ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,ⁱⁱⁱ and that it is addiction to nicotine that keeps youth smoking past adolescence.^{iv}

A Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers.^v

The majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke.^{vi}

Cigars and cigarillos, can be sold in a single “dose;” and enjoy a relatively low tax as compared to cigarettes.^{vii}

Spitless tobacco, including oral nicotine pouches, sales have increased from 100,000 units a year in 2018 to over 7000,000 units a year by 2023. ^{viii}

Nicotine use in any form during adolescence can cause addiction and can harm parts of the brain that control attention, learning, memory, mood, and impulse control. Nicotine use may also increase adolescents’ risk of future addiction to other drugs. ^{ix}

Spitless tobacco, in particular nicotine salt packages, provides a discrete, cheap nicotine delivery system.^x

The Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking.^{xi}

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.^{xii}

The U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale.^{xiii}

Ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021.^{xiv}

The Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”.^{xv}

The New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students,^{xvi} which is incompatible with the sale of tobacco and nicotine products.

Research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth.^{xvii}

The density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use.^{xviii}

Tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents.^{xix}

Policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers.^{xx}

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.”^{xxi}

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 not used by any other retailer, that does not sell food, beverages, 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/or 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 and applicable state licenses. The establishment shall not allow anyone under the age of 21 to work at the establishment.
- Blunt Wrap:** Any product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or a section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain loose tobacco or other fillers.
- Bona Fide Purchaser for Value:** A bona fide purchaser is someone who exchanges value for property without any reason to expect irregularities in the transaction.
- 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.
- 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 noncombustible 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’s offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A package: (i) from which nicotine in a solution or form is accessible through normal and foreseeable use by a consumer; and (ii) that is used to hold a soluble nicotine in any concentration: provided however, that “liquid nicotine container” shall not include a sealed, prefilled and disposable container of nicotine in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling of use, including reasonably foreseeable ingestion or other contact by children.

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.

Manufacturer Documentation: A written document from the manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that

certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products. A manufacturer documentation must:

1. Certify that the product(s) listed in the documentation are neither flavored nor have a characterizing flavor as defined by 105 CMR 665.005.
2. Include an attestation clause indicating that the “letter is true and accurate.”
3. State that the “manufacturer will immediately provide an updated letter to correct any inaccuracy.”
4. State that the person signing the letter “is authorized on behalf of the manufacturer to sign the letter.”
5. Contain a signature of the manufacturer’s corporate officer or an owner; and
6. For any Electronic Nicotine Delivery System product, certify that it does not have a nicotine content greater than 35 milligrams per milliliter. The content amount must be in “milligrams per milliliter.” If the nicotine content is documented in a separate letter, the above-listed requirements must be included in that separate letter.

Non-Age Restricted Retail Establishment: A retail establishment that holds a Town of Amherst Tobacco Product Sales Permit and Massachusetts Department of Revenue licenses 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.

Oral Nicotine Pouches: Pre-portioned pouches containing nicotine, flavorings, fillers, and other ingredients, not containing tobacco leaf, intended to be used between the cheek and gum to deliver nicotine, and do not require spitting as traditional smokeless tobacco does.

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.

Retailer: A person that operates a retail establishment.

Retail Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling papers: Sheets, rolls, tubes, cones, wraps, or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine.

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.

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 to 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. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

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, provided however that "Tobacco product" shall also include 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.

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:

- A. The town of Amherst permits tobacco sales in two categories of retail establishments:
 1. Non-Age Restricted Retail Establishments, as defined herein; and
 2. Adult-Only Tobacco Retail Stores, as defined herein.
- B. The town of Amherst prohibits the establishment of Smoking Bars.
- C. **Regulations that apply to BOTH Non-Age Restricted Retail Establishments AND Adult-Only Tobacco Retail Stores**
 1. No person shall sell or provide a tobacco product, as defined herein, to a person **under twenty-one (21) years of age.**
 2. **Sale of Flavored Tobacco Products Prohibited:** No person shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain manufacturer documentation certifying that all products possessed, held, kept sold or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer. (105 CMR 665.010(E)).

3. Tobacco Product Sales Permit:

- a. 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, indoor, 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.
- b. 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 any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
- c. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses 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.
- d. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also be displayed conspicuously at the retail establishment.
- e. The fee for a Tobacco Product Sales Permit shall be determined by the Amherst Board of Health annually.
- f. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of their retail establishment to ensure compliance with this regulation. Neither the permit holder nor their employees shall interfere or obstruct an inspection.
- g. 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.
- h. 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 E of the Violations section.
- i. Maximum Number of Tobacco Product Sales Permits:
 - i. The number of Tobacco Product Sales Permits issued in Amherst shall not exceed fourteen (14). 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.
 - ii. As of the effective date of this regulation, any permit surrendered, revoked or 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 i (above) shall be reduced by the number of retired permits.

- iii. Notwithstanding a cap on the total number of permit holders, a seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to the approval of the Board of health, as required herein.

The Purchaser shall apply for the transfer of the permit no later than thirty (30) calendar days after said purchase. The purchaser shall not sell tobacco until the transfer of the permit is approved by the Board of Health; and

All fines and suspensions of the previous owner must be satisfied prior to the sale.

j. **Retail Density**

- i. 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.
- ii. If the purchaser of a business with a valid tobacco sales permit pursuant to section i.iii above or the current holder of a tobacco sales permit changes the location of the business, the new location shall be subject to the retail density requirements within this regulation.
- iii. A new Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 1000 feet of an existing 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 Sales Permit to the nearest point of the property line of the site of the applicant's business premises

4. **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 and made available from the Amherst Board of 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 nine (9) feet from the floor.

5. **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.

6. **Free Distribution and Coupon Redemption Prohibited:**

No person shall:

- a. Distribute or cause to be distributed, any free samples of tobacco products as defined herein.
- b. 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.
- c. 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.

7. Out-of-Package Sales:

- a. 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.
- b. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000 Massachusetts Hazardous Waste Regulation, 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.
- c. 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.”
- d. 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.

8. Oral Nicotine Pouches:

Oral nicotine pouches can only be sold in adult-only retail tobacco stores.

9. Incorporation of State Laws and State Regulations:

- a. The sale or distribution of Tobacco Products, as defined herein, must comply with state statutes including but not limited to those provisions found at M.G.L. Ch. 270, §§6, 6A, 7, 28, 29 and M.G.L. Ch. 112, §61A.
- b. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”) 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”), and 105 CMR 665.00, Minimum Standards for Retail Sale of tobacco and Electronic Nicotine Delivery Systems.

D. Regulations specific to Non-Age Restricted Retail Establishments

- 1. No Non-Age Restricted Retail Establishment shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter. Retailers must obtain

manufacturer documentation verifying that all electronic nicotine delivery products possessed held, kept, sold or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010 (C)).

2. Buyer Identification:
Each person selling or distributing tobacco products shall verify the age of every 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.
3. 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.

E. Regulations specific to Adult-Only Retail Tobacco Stores

1. 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 of 21 from entering the Retail Establishment. Every person entering the establishment, shall be age verified, by means of a valid government-issued photographic identification containing the bearer's date of birth that the person is 21 years old or older.
2. 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."*
3. 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 an existing 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 ninety cents (\$2.90) 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 and eighty cents (\$5.80) 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. Vending Machines:

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

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

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

E. 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.

F. 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.

G. 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, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation the violator shall receive:
 1. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 665.040(d), for 7 consecutive business days.
 2. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for 7 consecutive business days.

3. In the case of three or more violations within a thirty-six (36) month period, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for **thirty (30) consecutive days**.
- B. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
- C. Failure to cooperate or interfere 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 their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.
- E. A permit issued pursuant to this regulation may be suspended, revoked, or not renewed for any of the following reasons:
 - a. Violation of the permit holder of any provision of state or local laws and/or regulations.
 - b. Fraud, misrepresentation, false material statement, concealment, or suppression of facts by the permit holder in connection with an application for a permit or for renewal thereof.
- F. 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 therefor in writing. After a hearing, the Amherst Board of Health shall fine and suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. 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.
- G. For purposes of such fines, 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.
- H. Separate Violations: Each day any violation that exists shall be deemed to be a separate offense.

VIII. Enforcement:

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

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process and the election of one remedy by the Board of health shall not preclude enforcement through any other lawful means.

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.

IX. 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.

X. Effective Date:

This regulation shall take effect on [date].

XI. Signatures:

Name	Signature	Date
Premila Nair	_____	_____
Risha Hess	_____	_____
Betsy Brooks	_____	_____
Jack Jemsek	_____	_____
Daya Mena	_____	_____

Adopted by the above on _____, at a posted Board of Health Meeting

A public hearing was held on _____.

Effective date _____, 2024 (Ninety [90] days after its publication

-
- ⁱ U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.
- ⁱⁱ CDC, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, (2010), http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.
- ⁱⁱⁱ U.S. Dep’t of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
- ^{iv} *Ibid.* at p. 13 (Executive Summary).
- ^v *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).
- ^{vi} Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data/>).
- ^{vii} CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>).
- ^{viii} Massachusetts Dept. of Public Health, Updated Presentation: Monitoring the Impacts of MA Flavored Tobacco Law (2024).
- ^{ix} Campaign for Tobacco Free Kids, *The Rise of Products Using Synthetic Nicotine* (2021) (<https://assets.tobaccofreekids.org/factsheets/0420.pdf>)
- CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>).
- ^x *Ibid*
- ^{xi} U.S. Dep’t of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) (www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

-
- xii Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Dep't of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012) www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.
- xiii See footnote 3 at p. 85.
- xiv MA YRBS 2017
- xv 310 CMR 30.136
- xvi New England Commission on Higher Education, *Standards for Accreditation* at 24 (2021), <https://www.neche.org/resources/standards-for-accreditation>.
- xvii Ying-Chih Chuang et al., *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) J. Epidemiol Cmty Health 568 (2005) (doi: 10.1136/jech.2004.029041); Golden SD et al., *County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012*, 17 (101005) Prev. Med. Rep. (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Leas EC et al., *Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States*, 179(3) JAMA Intern Med., 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); Lee JG et al., *Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis*. Tobacco Control. Published Online First: 03 September 2021; LR Reitzel et al., *The effect of tobacco outlet density and proximity on smoking cessation*. American Journal of Public Health. 2011, 101(2):315-320; L Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools?* Preventive Medicine. 2008, 47(2): 210-4.
- xviii Finan LJ et al., *Tobacco Outlet Density and Adolescents' Cigarette Smoking: A Meta-Analysis*, 28(1) Tob Control. 27 (2019) (doi: 10.1136/tobaccocontrol-2017-054065); Abdel Magid HS et al., *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*, 66(4) J. Adolescent Health 423 (2020) (doi: 10.1016/j.jadohealth.2019.09.004).
- xix Siahpun M et al., *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*, 124(9) Pub. Health 525 (2010) (doi: 10.1016/j.puhe.2010.04.010); Lee JG, et al., *Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPiRE Study*, 71(5) J. Epidemiol Cmty Health 487 (2017) (doi: 10.1136/jech-2016-208475); Fakunle DO et al., *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*, Ethn Health. 1 (2019) (doi: 10.1080/13557858.2019.1620178).
- xx Ribisl KM et al., *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*, 19(2) Nicotine Tobacco Res. 239 (2017) (doi: 10.1093/ntr/ntw185); Henry HG et al., *Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019)*, 110 (4) Am J. Pub. Health 547 (2020) (doi: 10.2105/AJPH.2019.305512); Myers AE et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 Prev. Med. 67(2015) (doi: 10.1016/j.ypmed.2015.01.025).
- xxi *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).