

Regulation of the Bedford Board of Health
Section 6B: Restricting the Sale of Tobacco Products
and Nicotine Delivery Products
Effective July 1, 2012
(exclusive of Section 6B6.0, which is effective July 1, 2013)

6B1.0 Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat (Centers for Disease Control and Prevention, Fact Sheet: Health Effects of Cigarette Smoking; January 12, 2012); and

Whereas among the 15.7% of students nationwide who currently smoked cigarettes and were aged less than eighteen (18) years, 14.1% usually obtained their own cigarettes by buying them in a store (i.e., convenience store, supermarket, or discount store) or gas station during the thirty (30) days before the survey (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2009," 59 MMWR SS-5, June, 2010); and

Whereas nationally in 2000, sixty-nine (69%) percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR SS-04, Nov. 2001); and

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (U. S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease, 2010); and

Whereas the results of the Bedford Board of Health tobacco compliance checks from 2011 indicate that 10% or 1 of 10 of Bedford retailers sold to a youth. The penalty this retailer incurred was to remove tobacco from the shelves and cease tobacco sales at his business for one week; and

Whereas in 2010, an estimated 69.6 million Americans aged 12 or older were current users of tobacco, of which an estimated 13.2 million Americans aged 12 or older smoked cigars (representing 5.2 percent of all tobacco users). In recent years, the number of people who smoked a cigar for the first time in the past year has been steady; in 2010, there were 2.9 million persons aged 12 or older who used cigars for the first time. The average age of first time cigar smokers declined slightly in 2010 to 20.5 years from 20.7 years in 2009 (U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Results from the 2010 National Survey on Drug Use and Health); and

Whereas in a Massachusetts sample of 5,000 youth age twelve to eighteen years, 16.4% reported they had smoked a cigar (Soldz S, Huyser DJ, Dorsey E. Youth preferences for cigar brands: rates of use and characteristics of users. *Tob Control*. 2003; 12(2):155-160); and

Whereas, in Massachusetts, the price of a pack of cigarettes can be more than ten times the price of a single cigar since minimum packaging requirements, and certain taxes do not presently apply to cigars, and lower priced cigars are attractive to youth looking for a less expensive alternative to cigarettes (Final Regulation Banning the Sale of Single, Cheap Cigars in Baltimore City, Baltimore City Health Department, January 14, 2009); and

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (National Cancer Institute. National Institutes of Health. Fact Sheet: Cigar Smoking and Cancer. October 27, 2010); and

Whereas nearly 1 in 30 of all youth age 12-17 years report cigar use in the past month (U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. Results from the 2010 National Survey on Drug Use and Health); and

Whereas according to the Centers for Disease Control and Prevention (Reducing tobacco use: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC; 2000), cigarette price increases reduce the demand for cigarettes and thereby reduce smoking prevalence, cigarette consumption, and youth initiation of smoking. As such, we extrapolate a similar outcome for cigars; and

Whereas in 1996 an estimated 6.0 million 14–19 year-olds reported having smoked a cigar during the previous year (U.S. Department of Health and Human Services, Centers for Disease Control, Morbidity and Mortality Weekly Report CDC's May 23, 1997 / 46(20);433-440); and

Whereas the 2012 U.S. Surgeon General's Report on Preventing Tobacco Use Among Youth and Young Adults, reports that in 2005 Ringel, Wasserman, & Andreyeva, conducted logistic regression analyses to examine whether increased cigar prices and state tobacco control policies related to cigar use. Using the 1999 and 2000 iterations of the National Youth Tobacco Survey, Ringel and colleagues analyzed data from 33,632 adolescent participants aged nine to seventeen. They found that increased cigar prices significantly decreased the probability of male adolescent cigar use and found that a 10% increase in cigar prices would reduce the sample's cigar use by 3.4%; and

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and

Whereas the sale of tobacco products and nicotine delivery products (as defined herein) are incompatible with the mission of health care institutions because they are detrimental to the public health and undermine efforts to educate patients on the safe and effective use of medication; and

Whereas educational institutions sell tobacco products to a younger population, which is particularly at risk for becoming smokers and such sale of tobacco products and nicotine delivery products are 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 Bedford Board of Health to curtail the access of tobacco products by minors.

6B2.0 Authority:

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

6B3.0 Definitions:

For the purpose of this regulation, the following words 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.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece.

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. 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, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Bedford or any agency thereof, which uses the services of one (1) or more employees.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services or employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health or its successor under M.G.L. c. 112 (or any successor statute) or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

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

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

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.

Tobacco/Nicotine Delivery Product Sales Permit: The permit granted by the Bedford Board of Health to sell or distribute tobacco and/or nicotine delivery products.

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product or nicotine delivery product.

6B4.0 Tobacco/Nicotine Delivery Product Sales to Minors Prohibited:

6B4.1

No person shall sell a tobacco or nicotine delivery product or permit a tobacco or nicotine delivery product to be sold to a minor; or not being the minor's parent or legal guardian, give a tobacco or nicotine delivery product to a minor.

6B4.2 Required Signage:

- a. In conformance with and in addition to Massachusetts General Laws, 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 or its successor and made available from the Bedford Board of Health. The notice shall be at least forty-eight (48) square inches in area 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 or its successor.

- b. The owner or other person in charge of a shop or other place used to sell tobacco at retail shall conspicuously post signage provided by the Bedford Board of Health that discloses current referral information about smoking cessation.
- c. 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 notice(s) shall be no smaller than eight-and-one-half (8.5") inches by eleven (11") inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that it(they) may be readily seen by a person standing at or approaching the cash register. The notice(s) 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.

6B4.3

Identification: Each person selling or distributing tobacco 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 eighteen (18) years old or older. Verification is required for any person under the age of twenty-seven (27).

6B4.4

All retail sales of tobacco and nicotine delivery products must be face-to-face between a seller (who has a valid permit to sell or distribute such products from the Bedford Board of Health) and the buyer.

6B5.0 Tobacco/Nicotine Delivery Products Sales Permit:

6B5.1

No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within Bedford, Massachusetts without first obtaining a tobacco/nicotine delivery product sales permit issued annually by the Bedford Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Bedford are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in the Town of Bedford.

6B5.2

As part of the tobacco/nicotine delivery product sales permit application process, the applicant will be provided with this Bedford 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 and nicotine delivery product sales regarding all applicable state laws regarding the sale of tobacco (including Massachusetts General Laws Chapter 270, Sections 6, 6A and 7, as may be amended from time to time) and this regulation.

6B5.3

Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco/nicotine delivery product sales permit can be issued by the Bedford Board of Health.

6B5.4

The fee for a tobacco/nicotine delivery product sales permit shall be determined by the Bedford Board of Health annually. All such permits shall be renewed annually by December 31st and shall expire after such date.

6B5.5

A separate tobacco/nicotine delivery sales permit is required for each retail establishment selling tobacco and/or nicotine delivery products.

6B5.6

Each tobacco/nicotine delivery product sales permit shall be displayed at the retail establishment in a conspicuous place.

6B5.7

No tobacco/nicotine delivery product sales permit holder shall allow any employee to sell a tobacco product or nicotine delivery product until such employee reads this regulation and applicable state laws regarding the sale of tobacco (including Massachusetts General Laws Chapter 270, Sections 6, 6A and 7, as may be amended from time to time) and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws. The statement(s) signed by a permit holder's employee(s) shall be available for inspection upon request by the Bedford Board of Health or its designee.

6B5.8

A tobacco/nicotine delivery product sales permit is non-transferable, except a new permit will be issued to a retailer who changes location. A new owner of an establishment that sells tobacco and/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.

6B5.9

Issuance of a tobacco/nicotine delivery product sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her/its retail establishment to ensure compliance with this regulation.

6B5.10

A tobacco/nicotine delivery 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.

6B6.0 Cigar Sales Regulated (this section effective July 1, 2013):

6B6.1

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

6B6.2

Subsection 6B6.1 shall not apply to:

- a. The sale or distribution of any cigar having a wholesale price of more than two dollars (\$2.00) or a retail price of more than two dollars and fifty cents (\$2.50); and,
- b. 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 said cigars outside the boundaries of the Town of Bedford.
- c. The Bedford Board of Health may adjust from time to time the amounts specified in this Subsection 6B6.2 to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

6B7.0 Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products.

6B8.0 Out-of-Package Sales:

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.

6B9.0 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.

6B10.0 Vending Machines:

All tobacco product and/or nicotine delivery product vending machines are prohibited.

6B11.0 Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions:

No health care institution located in the Town of Bedford shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution located within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products and/or nicotine delivery products.

6B12.0 Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:

No educational institution located in the Town of Bedford shall sell or cause 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.

6B13.0 Violations:

6B13.1

It shall be the responsibility of the 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 and/or nicotine delivery products. Any person who violates this regulation shall be subject to the following penalties:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00) and the tobacco/nicotine delivery product sales permit will be suspended for seven (7) consecutive business days.
- b. In the case of a second violation within twenty-four (24) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the tobacco/nicotine delivery product sales permit will be suspended for fourteen (14) consecutive business days.
- c. In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars (\$300.00) per violation and the tobacco/nicotine delivery product sales permit will be suspended for thirty (30) consecutive business days per violation.

6B13.2

Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco/nicotine delivery product sales permit for thirty (30) consecutive business days.

6B13.3

In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his, her or its permit is suspended shall be subject to the suspension of all Bedford Board of Health-issued permits for thirty (30) consecutive business days.

6B13.4

The Bedford Board of Health shall provide notice of the intent to suspend a tobacco/nicotine

delivery 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 therefore in writing. After a hearing, the Bedford Board of Health may suspend the tobacco/nicotine delivery product sales permit if said Board of Health finds that a sale to a minor occurred. For purposes of such suspensions, said 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 and nicotine delivery products shall be removed from the retail establishment upon suspension of the tobacco/nicotine delivery product sales permit and shall remain removed from the premises of the retail establishment for the duration of any such suspension. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

6B14.0 Non-Criminal Disposition:

6B14.1

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 21 D or by filing a criminal complaint at the appropriate venue.

6B14.2

Each day any violation exists shall be deemed to be a separate offense.

6B15.0 Enforcement:

6B15.1

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

6B15.2

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

6B16.0 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.

6B17.0 Effective Date:

This regulation shall take effect on July 1, 2012, exclusive of Section 6B6.0, which is effective July 1, 2013.

Adopted by unanimous vote on May 7, 2012.

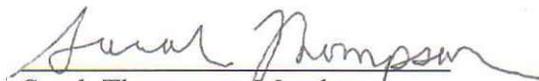
Effective: July 1, 2012, with the exception of Section 6B6.0 (Cigar Sales Regulated) which shall take effect on July 1, 2013.

BEDFORD BOARD OF HEALTH


Beatrice Brunkhorst, Co-Chair


Thomas Kinzer, Co-Chair


Anita Raj, Member


Sarah Thompson, Member


Kevin Wormstead, Member

This regulation replaces "Section 6B, Tobacco-Sales, Distribution (Youth Access)," adopted May 8, 2006.