



TOWN OF BRAINTREE

BOARD OF HEALTH

Joseph C. Sullivan
Mayor

RULES AND REGULATIONS GOVERNING THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴;

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

Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC (2010), *How Tobacco Smoke Causes Disease; The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁵;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009⁶;

Whereas the 2011-2012 Braintree Youth Risk Behavioral Survey (YRBS) results show that 2.53% of Braintree high school students had smoked cigars, cigarillos, or little cigars within the 21 to 31 days before the survey, 1.82% had used chewing tobacco within the 21 to 31 days before the survey, and 6.43% had smoked cigarettes within the 21 to 31 days before the survey.

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported⁷;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history⁸;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%⁹;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes¹⁰;

⁵ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from:

<http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁶ CDC (2009) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 72 (No SS-55)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

⁷ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

⁸ Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from:

http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

⁹ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use; Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth; Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

¹⁰ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit¹¹ and high prices deter youth from starting.¹² Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)¹³;

Whereas the sale of tobacco products and nicotine delivery products are incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who 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 Braintree Board of Health to regulate the sale of tobacco products and nicotine delivery products.

¹¹ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

¹² Chaloupka, F. J. & L Riccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 - 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>.

¹³ TTB (2011). *Statistical Report - Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

B. Authority:

This regulation is promulgated under the authority granted to the Braintree Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "boards of health may make reasonable health regulations."

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

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.

Board of Health: the Braintree Board of Health.

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 not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

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, firm, partnership, association, corporation, trust, or other business entity or organization of any kind, including the Town of Braintree or any agency thereof, which utilizes the services of one (1) or more individual employees.

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

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 the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

Minor: for the purposes of this regulation, a minor is any individual who is under the age of twenty-one (21).

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 product 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 products include, but are not limited to, e-cigarettes.

Non-Residential Roll-Your-Own (RYO) Machine: a mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: any person engaged in the sale or distribution of tobacco or nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product sales permit or any person who is required to apply for a Tobacco and Nicotine Delivery Product Sales Permit pursuant to these regulations, or his or her business agent.

Permit: a permit issued or required pursuant to this Regulation by the Town of Braintree.

Person: an individual, firm, partnership, association, corporation, trust, company, other business entity, or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, restaurant, or retail store, or the business agents or designees of any of the foregoing.

Retail Tobacco Store/Retailer: a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

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.

Smoking: the lighting of any cigar, cigarette, nicotine delivery product, pipe or other tobacco product or having possession of any lighted cigar, cigarette, nicotine delivery product pipe or other tobacco product.

Tobacco product: any product in any form containing tobacco, including, but not limited to, cigarettes, chewing tobacco, snuff, dip, cigars, pipe tobacco, blunt wraps and bidis.

Town: the Town of Braintree, Massachusetts.

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, any other tobacco product or nicotine delivery product. cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

D. Retail Sale of Tobacco and Nicotine Delivery Products:

1. No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold to any person under the age of twenty-one (21), or not being the recipient's parent or legal guardian, give tobacco products or Nicotine Delivery Products to any person under the age of twenty-one (21).

2. Required Signage:

a. 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 Braintree 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 4 feet or greater than 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.

b. In addition to the notice required under Section 2a., notices provided by the Braintree Board of Health shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. Such notice shall state that the sale of tobacco products to persons under age 21 is illegal. 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 "The sale of nicotine delivery products to minors under 21 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, "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 4 or greater than 9 feet from the floor.

c. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Braintree Board of Health that discloses current referral information about smoking cessation.

d. Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer and occur at the permitted location, except as provided in Section K of this regulation.

E. Tobacco and Nicotine Delivery Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail establishments within the town of Braintree without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Braintree Board of Health. Only owners of establishments with a permanent, non-mobile location in Braintree are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Braintree.
2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Braintree 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 federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Braintree Board of Health annually.
5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.
6. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal and state laws regarding the sale of tobacco 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 and federal laws.
8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco 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 and Nicotine Delivery Product 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 and 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 and/or has not satisfied any outstanding permit suspensions or municipal fees.

11. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits.

At any given time, there shall be no more than fifty (50) Tobacco and Nicotine Delivery Product Sales Permits issued in Braintree. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply at the time of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or nicotine delivery products. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-serve" basis as issued permits are either not renewed or are returned to the Board of Health.

F. Cigar Sales Regulated:

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. This Section shall not apply to:

a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

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 outside the boundaries of Braintree.

2. The Braintree 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.

G. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in the town of Braintree.

H. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

I. 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.

J. 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.

K. Vending Machines:

All tobacco and/or nicotine delivery product vending machines are prohibited, except establishments that currently hold a tobacco sales permit from the Braintree Board of Health as of the effective date of this regulation, for said vending machine. The vending machine must be equipped with a lock-out device, and located in a facility that ensures that no person younger than twenty-one (21) years is present, or permitted to enter at any time, and that hold valid pouring liquor license. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.

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

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

M. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions:

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

N. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:

No educational institution located in the town of Braintree 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.

O. Violations:

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 and/or nicotine delivery products. The violator shall receive:

- a. In the case of a first violation, a suspension of the "Tobacco and/or Nicotine Delivery Product Sales Permit" shall be for a period of five (5) consecutive days, a fine of one hundred dollars (\$100.00), and the permit holder and all establishment employees directly involved in tobacco and/or nicotine delivery product sales shall attend a tobacco and/or nicotine delivery product sales education program within 30 days of the first day of the suspension.
 - b. In the case of a second violation calculated within twenty-four (24) months of the date of the first violation, a suspension of the "Tobacco and/or Nicotine Delivery Product Sales Permit" shall be for a period of ten (10) consecutive days and a fine of three hundred dollars (\$300.00).
 - c. In the case of a third violation calculated within twenty-four months of the date of the first violation, a suspension of the "Tobacco and/or Nicotine Delivery Product Sales Permit" for thirty (30) days and a fine of five hundred dollars (\$500.00).
 - d. In the case of a fourth violation calculated within twenty-four months of the date of the first violation, a suspension of the "Tobacco and/or Nicotine Delivery Product Sales Permit" for one year.
2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco 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 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.
 4. The Braintree Board of Health shall provide notice of the intent to suspend a Tobacco and 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 Braintree Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products and nicotine delivery products shall be removed from or secured in the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove or properly secure all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

P. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

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

Q. Enforcement:

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

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

R. 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.

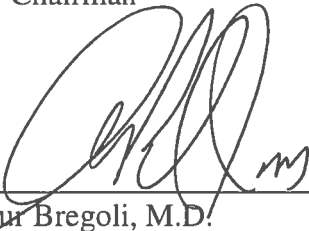
S. Effective Date:

This regulation shall take effect on **October 1, 2014.**



Philip Nedelman, M.D.
Chairman

Paula Dowd, R.N.
Vice-Chairman



Arthur Bregoli, M.D.
Clerk