

**Regulations of the Burlington Board of Health  
Sale and Use of Non-Tobacco Nicotine Delivery Products**

A. Statement of Purpose:

Whereas there exists conclusive evidence that; the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; the appeal created by Nicotine Delivery Products or e-cigarettes, which contain addictive nicotine, can lead minors into a nicotine addiction that may result in their daily use of tobacco; the U.S. Food and Drug Administration has conducted laboratory tests finding e-cigarettes contain toxic chemicals and carcinogens; e-cigarettes seriously compromise current laws governing indoor smoking bans including, but not limited to, the Smoke-Free Workplace Law (MGL Ch. 270, §22) and the Education Reform Act (MGL Ch. 71 §§2A, 37H); and the Burlington Board of Health aims to protect its youth against the use of Nicotine Delivery Products and its residents against the involuntary exposure of vapors from Nicotine Delivery Products such as e-cigarettes; now, therefore it is the intention of the Burlington Board of Health to curtail the access and use of Nicotine Delivery Products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Burlington Board of Health by 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:

**Business Agent:** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

**E-Cigarette:** Any electronic Nicotine Delivery Product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine, to simulate smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

**Employee:** Any individual who performs services for an employer.

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

**Liquid Nicotine (also known as "nicotine solution"):** Any product composed either in whole, or in part, of nicotine and manufactured for use with Nicotine Delivery Products, including, but not limited to, e-cigarettes.

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

Nicotine Delivery Product: Any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose.

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

Self Service Display: Any display from which customers may select a Nicotine Delivery Product without assistance from an employee or store personnel, excluding vending machines.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses Nicotine Delivery Products.

#### D. Nicotine Delivery Product Permit:

A Nicotine Delivery Product Permit is required for any retailer who sells Nicotine Delivery Products in Burlington.

1. No person shall sell or otherwise distribute Nicotine Delivery Products at retail within Burlington without first obtaining a Nicotine Delivery Product sales permit issued annually by the Burlington Board of Health. Only owners of establishments with a permanent, non-mobile location in Burlington are eligible to apply for a permit and sell Nicotine Delivery Products at the specified location in Burlington.
2. As part of the Nicotine Delivery Product sales permit application process, the applicant will be provided with the Burlington 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 Nicotine Delivery Product sales regarding any applicable state laws regarding the sale of Nicotine Delivery Products and this regulation.
3. The fee for a Nicotine Delivery Product sales permit shall be determined by the Burlington Board of Health annually. All such permits shall be renewed annually by December 31 of every year.
4. A separate permit is required for each retail establishment selling Nicotine Delivery Products.
5. Each Nicotine Delivery Product sales permit shall be displayed at the retail establishment in a conspicuous place.

6. No Nicotine Delivery Product sales permit holder shall allow any employee to sell Nicotine Delivery Products until such employee reads this regulation and any state laws regarding the sale of Nicotine Delivery Products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

7. A Nicotine Delivery Product sales permit is non-transferable. A new owner of an establishment that sells Nicotine Delivery Products must apply for a new Nicotine Delivery Product sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

8. Issuance of a 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.

9. A 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.

#### E. Nicotine Delivery Product Sales to Minors Prohibited:

1. No person shall sell Nicotine Delivery Products or permit Nicotine Delivery Products to be sold to a minor or give Nicotine Delivery Products to a minor.

2. Identification: Each person selling or distributing Nicotine Delivery Products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth verifying that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.

3. All retail sales of Nicotine Delivery Products must be face-to-face between the seller and the buyer.

#### F. Free Distribution/Sampling/Self-Service Displays/Vending Machines:

- a. No person shall distribute, or cause to be distributed, any free samples of Nicotine Delivery Products.
- b. No person shall permit any sampling of a Nicotine Delivery Product.
- c. All self-service displays of Nicotine Delivery Products are prohibited.
- d. Vending machines selling Nicotine Delivery Products are prohibited.

#### G. Use Prohibited:

The use of e-cigarettes is hereby prohibited in Burlington in locations and establishments covered by M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law) and in additional locations and establishments covered by any regulation or bylaw in Burlington.

## H. Signage:

The owner or other person in charge of a shop or other place used to sell Nicotine Delivery Products at retail shall conspicuously post a sign stating that “The sale of Nicotine Delivery Products to minors under 18 years of age is prohibited.” The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be no smaller than 8.5” by 11” and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

## I. Violations:

### 1. Violations of Sections D and E:

a. It shall be the responsibility of the retailer or his or her business agent to ensure compliance with Sections D and E of this regulation pertaining to the sale and distribution of Nicotine Delivery Products. The violator shall receive:

(i). In the case of a first violation, a fine of one hundred dollars (\$100.00).

(ii). In the case of a second violation within 12 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and all Board of Health-issued permits governing tobacco sales and non-tobacco nicotine delivery products may be suspended for seven (7) consecutive business days.

(iii). In the case of three or more violations within a 12 month period, a fine of three hundred dollars (\$300.00) and all Board of Health-issued permits governing tobacco sales and non-tobacco nicotine delivery products may be suspended for thirty (30) consecutive business days.

b. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of any or all Board of Health-issued permits or licenses for thirty (30) consecutive business days.

c. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of products 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.

d. The Burlington Board of Health shall provide notice of the intent to suspend a Nicotine Delivery Product 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 Burlington Board of Health may suspend the permit if the Board finds that a sale to a minor 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 Nicotine Delivery Products shall be removed from the retail establishment upon suspension of the Nicotine Delivery Product permit. Failure to remove all Nicotine Delivery Products shall constitute a separate violation of this regulation.

## 2. Violations of Section F:

a. It shall be the responsibility of the retailer or his or her business agent to ensure compliance with Sections F of this regulation pertaining to the free distribution and sampling of Nicotine Delivery Products. The violator shall receive:

(i). In the case of a first violation, a fine of one hundred dollars (\$100.00)

(ii). In the case of a second violation within 12 months of the date of the current violation, a fine of two hundred dollars (\$200.00)

(iii). In the case of three or more violations within a 12 month period, a fine of three hundred dollars (\$300.00)

## 3. Violations of Section G:

a. It shall be the responsibility of the owner, manager, or other person in control of a building, vehicle or vessel to ensure compliance with Section G of this regulation pertaining to the use of e-cigarettes. The violator shall receive:

(i) One hundred dollars (\$100) for the first violation

(ii) Two hundred dollars (\$200) for a second violation occurring within two (2) years of the date of the first offense

(iii) Three hundred dollars (\$300) for a third or subsequent violation occurring within two (2) years of the second violation

(iv) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance, the Board of Health may revoke or suspend the license to operate and shall provide notice of the intent to suspend such license, 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 owner, manager 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. 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.

b. An individual or person who violates Section G by using an e-cigarette in a place where smoking is prohibited shall be subject to a penalty of one hundred dollars (\$100.00).

c. Violations may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.

4. Each calendar day on which a violation occurs shall be considered a separate offense.

5. This regulation shall be enforced by the Board of Health and its designees.

6. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

#### J. Non-Criminal Disposition:

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

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

#### K. Enforcement:

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

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

#### L. 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.

#### M. Effective Date:

This regulation shall take effect on December 31, 2010.