

Attest. A true copy.

*Julietta S. Haas
Egremont Town Clerk*

Regulation of the Egremont Board of Health
Restricting the Sale of Tobacco Products

9/19/2016

Effective Date: **November 15, 2016**

These regulations shall replace any and all prior Tobacco Regulations.

A. 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 (hereinafter "CDC"), Health Effects of Cigarette Smoking Fact Sheet, (January 2012)*); 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 (*CDC, Youth Risk Behavior, Surveillance Summaries. 2009, MMWR 2010:59 (No. SS-55) at 11*); 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 (*CDC, Youth Tobacco, Surveillance Summaries. 2000, MMWR 2001:50 (No. SS-04)*); 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. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General, Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.*); whereas people who purchase for distribution to minors are between the ages of 18 and 20 (*Difranza Jr., Wellman RJ, Mermelstien R. et. al. The natural history and diagnosis of nicotine addiction, current review in Pediatrics. 2011*), whereas nearly 90% of smokers started smoking by age 20 (*SAMHSA. Calculated based on the data in the 2011 National Survey on Drug Use and Health*); whereas scientific study has concluded the human brain between the ages of 18 – 25 is especially vulnerable to tobacco addiction (*Morales et al, Cigarette Exposure, Dependence & Craving are Related to Unsubstantiated Thickness in Young Adult Smokers; Nature/Neuropsychopharmacology, 2014, pages 1 – 7*); whereas delaying the age of initiation of nicotine significantly prevents a lifetime of addiction (*The Surgeon General Report. 2012, Preventing Youth Tobacco Use*); whereas according to the CDC, cigarette price increases reduce the demand for cigarettes and thereby reduce smoking prevalence, cigarette consumption, and youth initiation of smoking (*U.S. Department of Health and Human Services. Reducing Tobacco Use: A Report of the Surgeon General. Atlanta, GA. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, and whereas commercial Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health; whereas commercial Roll Your Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the federal and state excise taxes that are imposed on conventionally manufactured cigarettes (*RYO FILLING STATION, www.ryofillingstation.com (Feb. 27, 2012)*). High excise taxes encourage adult smokers to quit and deter youth from starting (*Kenneth E. Warner, Smoking and Health Implications of a Change in the Federal Cigarette Excise Tax, 255 J. AM. MED. Ass'N 1028 (1986), Frank J. Chaloupka & Rosalie Liccardo Pacula, The Impact of Price on Youth**

Tobacco Use, in 14 SMOKING AND TOBACCO CONTROL MONOGRAPHS: CHANGING ADOLESCENT SMOKING PREVALENCE 193 (U.S. Dep't Health and Human Services et al. eds., 2001)). Therefore, 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; 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; 2000 at 358); Now, therefore it is the intention of the Egremont Board of Health to regulate the access of tobacco products and nicotine delivery products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Egremont 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:

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 Town of Egremont Board of Health and their legally designated agents.

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.

Commercial Roll-Your-Own (RYO) machine: A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products. Home-use RYO machines are not Commercial Roll-Your-Own machines.

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, 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 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.

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.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

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 and 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 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.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the North Adams Board of Health.

Self-Service Display: Any display or commercial RYO machine from which customers may select or make a tobacco product or a Nicotine Delivery Product without assistance from an employee or store personnel.

Tobacco Sales Clerk: An individual, employer, employee, retail store manager, the owner or operator of any establishment engaged in the sale or distribution of tobacco and nicotine delivery products directly to consumers.

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 hookah, or other similar products, that rely on vaporization or aerosolization. "Tobacco product" includes 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, any other tobacco product or Nicotine Delivery Product.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. Effective **November 15, 2016** no person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age of twenty one (21) years of age.

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 Egremont 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 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.

b. 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 Egremont Board of Health that discloses current referral information about smoking cessation.

3. Identification: Each person selling or distributing tobacco products shall verify, for each transaction, the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is of the minimum legal age. See section D1 of this regulation for the minimum legal age to purchase tobacco products.

4. All retail sales of tobacco products must be face-to-face between the seller and the buyer.

E. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the town of Egremont without first obtaining a Tobacco Product Sales Permit issued annually by Egremont Board of Health. Only owners of establishments with a permanent, non-mobile location in the town of Egremont are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in the town of Egremont.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Egremont 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 product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.
4. The fee for a Tobacco Product Sales Permit shall be determined by the Egremont Board of Health annually.
5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.
6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
7. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, 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.
8. Issuance of a Tobacco 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 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.
10. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with §M.5

F. Free Distribution and Coupon Redemption:

No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein.

2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to 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; or
3. 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.

Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

G. Out-of-Package Sales:

1. 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.
2. A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Egremont Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All retailers 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."

H. Self Service Displays:

All self-service displays of tobacco products or nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

I. Tobacco Vending Machines:

All tobacco and nicotine delivery product vending machines are prohibited.

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

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

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

1. No educational institution located in the Egremont Board of Health jurisdiction 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.

L. Incorporation of Attorney General Regulation 940 CMR 21.00:

The sale or distribution to tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”).

M. Violations to the Permit Holder and/or his/her Business Agent:

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 products. The violator shall receive:

a. In the case of a first violation:

Permit holder and/or his or her business agent, a fine of one hundred dollars (\$100.00).

b. In the case of a second violation within 24 months of the date of the current violation:

Permit holder and/or his or her business agent, a fine of two hundred dollars (\$200.00) and the tobacco products sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of third violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of three hundred dollars (\$300.00) and the tobacco product sales permit shall be suspended for fourteen (14) consecutive business days.

d. In the case of fourth violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of five hundred dollars (\$500.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

e. In the case of fifth violation within a 24 month period:

Permit holder and/or his or her business agent, a fine of seven hundred and fifty dollars (\$750.00) and the tobacco product sales permit shall be suspended for three hundred and sixty five (365) consecutive business days.

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

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

5. The Egremont Board of Health shall provide notice of the intent to suspend a tobacco product permit holder, which notice shall contain the reasons therefore. A hearing may be requested in writing within seven (7) days of receipt of letter. 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. The Egremont Board of Health after a hearing may suspend the tobacco products sales permit. All tobacco products shall be removed from the retail establishment upon suspension of

sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco product sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

6. Any permit holder who does not pay the assessed fine within twenty-one (21) days from fine issuance may be subject to criminal proceedings.

N. 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.

O. Enforcement:

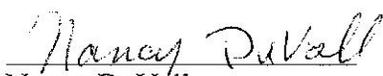
Enforcement of this regulation shall be by the Egremont Board of Health or its designated agent(s).

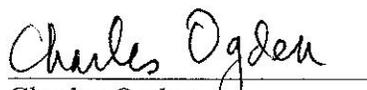
Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Egremont Board of Health or its designated agent(s) and the Board shall investigate.

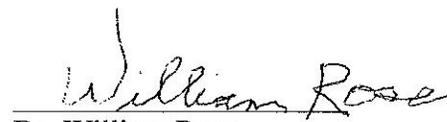
P. Severability:

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.

Q. Effective Date: November 15, 2016


Nancy DuVall
Chairman


Charles Ogden


Dr. William Rose

Town Clerk Attested Date: September 19, 2016

Date of Published Notice of Public Hearing: Berkshire Record September 1, 2016 Edition

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