

MEMORANDUM

Attached are copies of the new tobacco regulations from the Board of Health along with the specific regulations regarding synthetic marijuana and a regulation announcement concerning a 50' buffer zone to prevent second hand smoke from entering food establishments.

Copies have been provided to the Board of Health members

Board of Selectmen

Town Administrator

Town Clerk

Chief of Police

Fire Chief

Local Vendors / permit holders

Public posting(s)

Please call the Board of Health at 781-767-3030 with any questions.

Regulation of the Holbrook Board of Health
Prohibition of the Sale of Tobacco Products to Minors-2014

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; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MI VIWR 1 (Nov. 2000)); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Ibid.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore the Holbrook Board of Health hereby promulgates this Regulation (Regulation) to curtail the access to tobacco products by minors.

B. Authority:

This Regulation is promulgated pursuant to the authority granted to the Holbrook Board of Health under Massachusetts General Laws Chapter 111, §31.

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.

"Electronic Cigarette": (Also, E-Cigarette) A nicotine delivery system which may or may not have the appearance of a cigarette, but which uses battery power or some other form of heat or energy to assist in delivering nicotine to the user and which provides vapor or liquid or other form of nicotine to the user, or relies on vaporization of solid or liquid nicotine.

Employee: Any individual who performs services for an employer.

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

Lock-out device: A device that locks out sales from a vending machine unless a release mechanism is triggered by an employee.

Minor: For the purpose of this Regulation, a minor is any individual who is under the age of nineteen (19) years.

Nicotine Delivery Product: Any manufactured non-medical method, device, or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, whether or not smoke or vapor is produced, which is sold for the purpose of delivering nicotine in any of its forms to an individual, either directly or indirectly and either internally or externally, not including traditional tobacco products as defined in this Regulation, and which has not been prescribed by a physician or other licensed medical personnel who can legally prescribe medication. Nicotine delivery products include, but are not limited to smokeless tobacco products as defined in this Regulation. A nicotine delivery product does not include any 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 gum, nicotine patches, and e-cigarettes are exempt from prohibition of sale by this regulation if sold to individuals above the age of 19.

Non-Medical: Not approved by the US Food and Drug Agency (FDA).

Permit: A tobacco sales permit issued or required pursuant to this Regulation.

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit from the Holbrook Board of Health or any person who is required to apply for a tobacco sales permit pursuant to this Regulation, or his or her business agent.

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 tobacco products directly to consumers.

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

Smokeless Tobacco Product: For the purposes of this Regulation, smokeless tobacco shall be defined as any tobacco product that may or may not produce a vapor, but does not produce smoke, not including chewing tobacco or "snuff".

Tobacco Product: Cigarettes, cigars, loose leaf tobacco, chewing tobacco, pipe tobacco, "snuff", "Blunt Wraps", "Snus", so called (Smokeless, flavored tobacco product primarily placed by the user between the inner lip and the gum, but can be ingested by other methods), and any other merchandise for human consumption containing plant material from any of several plants belonging to the genus *Nicotiana*, of the nightshade family, including, but not limited to the species *Nicotiana tabacum*.

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

D. Tobacco Sales to Minors Prohibited:

1. No person shall sell or distribute tobacco products, smokeless tobacco product, e-cigarettes, or any other non-medical nicotine delivery product, or permit such products to be sold or distributed to any minor as defined in this Regulation; or not being the parent or legal guardian of the minor, give such products to a minor.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, § 7, a copy of Massachusetts General Laws, Chapter 270, § 6, (Statute) shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products or any other non-medical nicotine delivery system at retail. Any shop or other place which conducts the sale or distribution of cigars must also post a notice (Notice) that states, "WARNING: Cigars Are Not a Safer Alternative to Cigarettes or Smokeless Tobacco", or, "WARNING: Cigar Smoke Contains Carbon Monoxide and Nicotine, An Addictive Drug". The copy of the Statute and the Notices shall each be at least 48 square inches and shall be posted conspicuously by the permit holder in the shop 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 copy of the Statute and the 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. The copy of the Statute and the Notices may be provided by the Holbrook Board of Health.
3. Identification: Each person selling or distributing tobacco products, e-cigarettes, or any other non-medical nicotine delivery product shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth. The person selling tobacco or nicotine products shall verify that the purchaser is ~~nineteen~~ (19) years of age or older. Verification is required for any person who appears to be under the age of twenty-seven (27).

E. Other Prohibited Items:

E-cigarettes as defined in this Regulation, nicotine gum, and nicotine patches used for medical purposes such as quitting or reducing smoking are exempt from this provision, however such exempt products shall not be sold or delivered to any minors under the age of 19 unless such minor provides a signed prescription by a licensed physician, physician assistant, or nurse practitioner. Violations of this section shall be punishable pursuant to Section L (1) (g) and (h),

Other prohibited activities are the sale of blunt wraps, no redemption of coupons, no "roll your own" machines, no vending machines, no self service displays and no sale of individual or pack separated sales are allowed.

F. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco or deliver nicotine products within the Town of Holbrook without first obtaining a tobacco seller's permit (Permit) which expires annually, by the Holbrook Board of Health.
2. As part of the Permit application process, the applicant will be provided with the "Prohibition of the Sale of Tobacco Products to Minors Regulation with 2013 Revisions" (Regulation). Each applicant shall 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 sales of tobacco products concerning both state laws regarding the sale of tobacco products and this Regulation.
3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before Permit pursuant to this Regulation may be issued by the Holbrook Board of Health.
4. The fee for a Permit shall be determined by a simple majority vote of the Holbrook Board of Health annually. All such permits shall be renewed annually by January 1st of each year.
5. A separate Permit is required for each retail establishment selling tobacco products and shall include the types of tobacco or nicotine products to be sold.
6. Each Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Permit holder shall allow any employee to sell cigarettes, or other tobacco products or non-medical nicotine delivery products until such employee reads this Regulation and State laws regarding the sale of tobacco or nicotine products, and signs a statement, a copy of which will be placed on file in the office of the Holbrook Board of Health and the employer, stating that the employee has read this Regulation and applicable State laws, and is required to check the identification of any person appearing to be under the age of twenty-seven (27) and shall not to sell tobacco or nicotine products to anyone under the age of nineteen (19) years pursuant to this Regulation.
8. Tobacco Sale Permits in Holbrook are non-transferable.
9. Issuance of a Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his / her retail establishment by the Holbrook Board of Health or its agents to ensure compliance with this Regulation.
10. No permit shall be renewed in the event of outstanding fines or unpaid taxes and that all signage meet with state and local regulations.
11. Note: It is the intent of the Board of Health (as voted on 8/19/2014) to limit and cap the number of permits at 20 and reduce by attrition to 15 permits in the town.

G. Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, or any other non-medical nicotine delivery product.

H. Out-of-Package Sales:

No person shall 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.

I. Self-Service Displays:

Self-service displays of tobacco products or any other non-medical nicotine delivery products are prohibited. All humidors must be locked. Walk-in humidors must be locked so that access cannot be gained from the outside without unlocking it. Self-service displays that are located in facilities where the retailer checks the identification of customers and ensures that no person younger than nineteen (19) years of age is permitted to enter at any time are exempted from this section of the Regulation.

J. Tobacco Vending Machines: All tobacco vending machines are prohibited with the following exception only. A tobacco vending machine equipped

with a lock out device in an establishment with a valid liquor-pouring license. A lock-out device locks out sales from the vending machine unless a release mechanism triggered by an employee is permitted. The release mechanism must not allow continuous operation of the vending machine, must be out of the reach of all customers, and in a location accessible only to employees. All vending machines subject to this exception must be in full view at all times of the employee(s) responsible for operating the lock-out device.

K. Responsibility:

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 and any other non-medical nicotine delivery product.

L. Violations:

L Violations of this Regulation shall be punishable as follows:

- a. In the case of a first violation, the Permit Holder shall receive a fine in the amount of one hundred dollars (\$100) and the permit shall be suspended for three (3) consecutive business days.
- b. In the case of two (2) violations within an eighteen (18) months period the Permit Holder shall receive a fine in the amount of two hundred dollars (\$200) and the permit shall be suspended for seven (7) consecutive business days.
- c. In the case of three violations within an eighteen (18) month period, the Permit Holder shall receive a fine in the amount of three hundred dollars (\$300) and the permit shall be suspended for thirty (30) consecutive business days.
- d. In the case of four or more violations within an eighteen (18) month period, the Permit Holder shall receive a fine in the amount of three hundred dollars (\$300) and the permit shall be permanently revoked.
- e. All fines shall be paid prior to lifting of any suspensions, regardless of the length of the suspension. Revocations shall be permanent.
- f. Any Permit holder who engages in the sale or distribution of tobacco products or any other nicotine delivery system or device to any person while the permit holder's permit is suspended shall be subject to the suspension of all Holbrook Board of Health issued permits for thirty (30) consecutive business days.
- g. Any person who engages in the sale or distribution of tobacco products in the Town of Holbrook without having a valid Permit shall be subject to a fine of five hundred dollars (\$500) for each offense.
- h. Each day that a violation of this Regulation occurs shall be considered a separate offense.
- i. It should be noted that if a fine or penalty be different in the state

and local regulations, the higher fine shall be enforced.

- j. All signage be in compliance with state and local regulations.
2. Refusal by a Permit holder to allow an inspection pursuant to this Regulation shall result in the suspension of the Permit for thirty (30) consecutive business days.
3. The Holbrook Board of Health shall provide the Permit holder with written notice of the intent to suspend or revoke a Permit, which notice shall contain the reasons therefore and shall establish a time, place, 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 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 Holbrook Board of Health, after the hearing, may suspend, revoke, or reinstate the Permit. All tobacco products shall be removed from the retail establishment upon suspension or revocation of the Permit. Failure to remove all tobacco products shall constitute a separate violation of this Regulation and shall be subject to the penalties stated in Sections L(1)(f) and/or L(1)(g) of this Regulation.
4. Any permit holder found in violation of this Regulation who does not pay the assessed fine within twenty-one (21) days from the date the fine is issued may be subject to criminal proceedings and/or permanent revocation of the tobacco seller's permit.

M. Appeal:

Any person aggrieved by the final decision of the Board of Health may seek relief therefrom, in any court of competent jurisdiction, as provided by the General Laws of the Commonwealth of Massachusetts.

N. Enforcement:

Enforcement of this Regulation shall be by the Holbrook Board of Health, the Holbrook Police Department, or its designated agent(s).

O. Effective Date:

This Regulation shall take effect on January 1, 2015.

P. Severability:

This Regulation is severable. 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.

Signed: Paul M. Sullivan Date: 10/15/2014

Signed: _____

Signed: 

TOWN OF HOLBROOK

BOARD OF HEALTH

SYNTHETIC DRUGS

A. Statement of Purpose:

WHEREAS, it has been reported by various agencies that synthetic cannabinoids, synthetic stimulants and synthetic psychedelic/hallucinogens have been linked to serious physical effects resulting in hospitalization and death when ingested, inhaled or otherwise introduced into the human body. These synthetic cannabinoids, synthetic stimulants and synthetic psychedelic/hallucinogens pose health, safety, and welfare issues for the residents of Holbrook.

B. Authority:

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

C. Definitions:

As used in this Section, the following terms shall have the meaning ascribed to them below:

Person: An individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

Synthetic Marijuana:

(i) any substance as defined by 21 U.S.C. §812(d), excluding "marijuana" as such term is defined in Massachusetts General Laws Chapter 94C §1, 21 U.S.C. §812(d) notwithstanding; or, (ii) any one or any combination of the following cannabinoids, or a substance containing any one or combination of the following cannabinoids: JWH-018, JWH-073, CP-47, 497, JWH-200, or, cannabicyclohexanol; or, (iii) vegetable material that has been chemically treated and is possessed, sold, or, purchased, with the intent that it will, despite any labeling to the contrary, be consumed by humans, for the purpose of voluntary intoxication, said vegetable material typically having a retail price of over five dollars per ounce and contained within packaging indicating that the content is not for human consumption, which, if consumed, may induce an effect or effects of intoxication similar to a controlled substance or imitation controlled substance, said effect or effects to include elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, dulling of the sense or nervous system, or, distortion of audio, visual or mental processes.

Synthetic Marijuana Analogue: a substance: (i) the chemical structure of which is substantially similar to the chemical structure of synthetic marijuana; (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana; (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana.

Consumed: introduced into the human body by any manner including but not limited to inhalation and ingestion.

D. Prohibited Activity

- (1) No person shall sell, offer to sell, distribute, gift, or, publicly display for sale, any synthetic marijuana or synthetic marijuana analogue.
- (2) This regulation shall apply regardless of whether the synthetic marijuana or synthetic marijuana analogue is described as tobacco, herbs, incense, spice, bath salts, plant food or any blend thereof, and, regardless of whether the substance is marketed for the purpose of being smoked or ingested, and, regardless of whether the substance is marked "not for human consumption".

E. Penalty for violation

Any violation of this section shall be punishable by a fine of \$150 (one hundred fifty dollars) for a first offense.

Any subsequent violation shall be punishable by a fine of \$300 (three hundred dollars) for each offense.

F. This regulation may be enforced by criminal complaint before the District Court, or, by noncriminal disposition.

G. Severability: If any part of this regulation or the application thereof to any person or circumstances is held by a court of competent jurisdiction to be invalid, the remainder of the ordinance shall remain in effect.

H. This regulation was approved by the Board at a legally posted and regularly scheduled meeting held on 9-17-2014, 2014. This regulation shall take effect immediately upon publication of a summary in a newspaper of general circulation in the Town, which date shall be posted on the front page of this regulation.

Paul M. Gallivan

10/15/2014



NOTIFICATION / ANNOUNCEMENT

HOLBROOK BOARD OF HEALTH

On October 15, 2014 the Holbrook Board of Health adopted a regulation requiring that food service facilities (those restaurants and sandwich shops, fast food restaurants and clubs with permits from the Board of Health) notify patrons that there is now a “buffer zone” of 50 feet from any entrance or exit used by the public where smoking is now prohibited. The regulation creates a non smoking area from any entrance or exit to a distance of 50’ from those doorways.

Violators of this regulation are subject to fines as specified in the Town of Holbrook regulations and / or the state health code or a suspension or revocation of the establishment’s permit.

This is to become effective on December 1, 2014