Town of Andover
Board of Health

REGULATIONS CONCERNING THE SALE AND USE OF TOBACCO PRODUCTS

1.0 AUTHORITY

These Regulations are adopted under the authority of M.G.L.c. 111, §§ 31, 122, and 143.

2.0 PURPOSE AND SCOPE

Acting in accordance with the above cited authorities, the Andover Board of Health hereby adopts these regulations as reasonable requirements for the protection and promotion of the health and safety of all persons residing in and visiting Andover. The purpose of these regulations is to establish minimum standards where tobacco sale and use are concerned, as tobacco has been found to be a danger to the public health.

3.0 APPLICABILITY

These Regulations apply to all facilities and entities as indicated below. Upon adoption and publication of a legal notice, these regulations shall rescind and supersede the Regulations Concerning Smoking in Certain Places which were adopted on April 13, 2009. Any revisions to these Regulations shall be effective upon the publishing of a legal advertisement stating that they have been revised.

4.0 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: The Board of Health of the Town of Andover.

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, and 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, partnership, association, corporation, trust or other organized group of individuals, including Andover or any agency thereof, which uses the services of one (1) or more employees.

ENCLOSED: Any space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

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 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).

MUNICIPAL BUILDING: Any building or facility owned, operated, or leased by the Town including school buildings and school grounds.

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 product includes, but is 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.

OUTDOOR SPACE: An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

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.

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 or nicotine delivery products directly to consumers.

RETAIL TOBACCO STORE: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Andover Board of Health.

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.

SMOKING (or smoke): The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

SMOKING BAR: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, Section 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking Bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

TOBACCO PRODUCT: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

TOWN: The Town of Andover.

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.

5.0 TOBACCO AND NICOTINE DELIVERY PRODUCT SALES TO MINORS PROHIBITED

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

5.2 REQUIRED SIGNAGE

5.2.1 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 Andover 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.

5.2.2 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 Andover Board of Health that discloses current referral information about smoking cessation.

5.2.3 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.

5.3 IDENTIFICATION: Each person selling or distributing tobacco 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 18 years old or older. Verification is required for any person, regardless of age.

5.4 All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer (except for the purchase of tobacco from vending machines) and all retail sales of tobacco or nicotine delivery products must occur at the permitted location.

6.0 TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT

6.1 No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within Andover without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Andover Board of Health. Only owners of establishments with a permanent, non-mobile location in Andover are eligible to apply for a permit and sell tobacco products or nicotine delivery products at the specified location in Andover.

6.2 As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Andover 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.

6.3 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.

6.4 The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be in accordance with the most current Board of Health fee schedule. All such permits shall expire on December 31st of the year that they are issued, and must be renewed prior to their expiration for another twelve month period.

6.5 A separate permit is required for each location where a retail establishment **is** selling tobacco or nicotine delivery products.

6.6 Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

6.7 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.

6.8 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.

6.9 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.

6.10 Issuance and holding of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

6.11 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.

7.0 MISCELLANEOUS REGULATIONS:

7.1 No person or entity shall sell or distribute blunt wraps within Andover, except that retail tobacco stores are permitted to sell or distribute blunt wraps.

7.2 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 tobacco products for free or at a reduced price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

7.3 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.

7.4 All self service displays of tobacco products and/or nicotine delivery products are prohibited. All humidors located in areas where the general public has free and easy access including, but not limited to, walk-in humidors must be locked.

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

7.6 All Non-Residential Roll-Your-Own (RYO) Machines are prohibited.

7.7 No educational institution located in Andover 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.

8.0 ENTRANCES TO MUNICIPAL BUILDINGS

8.1 Smoking shall be prohibited in all municipal buildings as well as in the area within 25 feet of any municipal building entrance or exit, except that this shall not apply to a smoker transiting through such 25 foot area nor a smoker approaching an entrance or exit with the intention of extinguishing a tobacco product. This setback distance shall be reduced to 10 feet for both the front and side (Main Street and Barnard Street) entrances to the building known as the Town House located at 20 Main Street, Andover.

9.0 OUTDOOR DINING AREAS

9.1 Smoking and the use of other tobacco products shall be prohibited in all outdoor seating areas of restaurants, bars, taverns and any other outdoor place where food, alcoholic beverages, or non-alcoholic beverages are sold or served to the public, regardless of whether the seating area is on private or public property. The owner, manager, or other person in control of the outdoor seating area shall be subject to the penalties herein. Also,the Person smoking shall be subject to the penalties herein.

9.2 The person having control over the outdoor seating area shall clearly post the area as a non-smoking area using signage as described herein, and shall be prohibited from placing ashtrays in the area or otherwise encouraging the use of tobacco products. On privately owned property, it shall be the permit holder for the establishment with the seating, or its manager. Where an individual or business has received a license from the Town of Andover to maintain seating on municipal property, said individual or manager of the establishment shall be responsible.

9.3 The required signage shall include the universal symbol for no smoking, and shall be prominently displayed.

10.0 to 15.0 RESERVED

16.0 VIOLATIONS/ENFORCEMENT/PENALITIES

16.1 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. The violator shall receive:

a) In the case of a first violation, a fine of one hundred (100) dollars;

b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred (200) dollars and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for seven (7) consecutive business days.

c) In the case of three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco and Nicotine Delivery Product Sales Permit may be suspended for thirty (30) consecutive business days.

d) In the case of more than three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco and Nicotine Delivery Product Sales Permit may be revoked.

16.2 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.

16.3 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 revocation of all tobacco related permits.

16.4 The Andover Board of Health shall provide notice of the intent to suspend or revoke a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefore 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 Andover Board of Health shall suspend or revoke the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, 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 the retail establishment upon suspension or revocation of the Tobacco and Nicotine Delivery Product Sales Permit.

Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

16.5 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.

16.6 The Board of Health or its agent may apply for injunctive relief to enforce the provisions of these regulations in any court of competent jurisdiction.

17.0 OTHER APPLICABLE LAWS

17.1 This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety and fire codes, regulations or statutes.

17.2 Where these regulations conflict with any other local, state, or federal rules, regulations, and laws, the strictest provision shall prevail.

18.0 PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

18.1 The Board of Health adopts the Massachusetts Smoke-Free Workplace Law (Massachusetts General Law Chapter 270, Section 22) by reference and any future revisions as a local regulation.

18.2 Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is also hereby prohibited in the following locations:

a) retail tobacco stores
b) smoking bars
c) outdoor spaces of restaurants, bars, taverns and any other outdoor space where food and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the public and served to the public, or otherwise consumed or carried by the public.
d) within 25 feet of any playground equipment or sporting facility inside a public park or recreation area owned or controlled by the Town of Andover.

18.3 The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts General Laws Chapter 270, Section 22 and in any area regulated herein.

19.0 VARIANCE

19.1 The Andover Board of Health may vary the application of any provision of these regulations with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health is not in conflict with the spirit of these standards. Any variance granted by the Board of Health must be in

writing with a copy available to the public at all reasonable hours in the Office of the Andover Board of Health.

20.0 SEVERABILITY

20.1 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.

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Approved by:

Candace Martin, Chairman

Katherine Kellman, Vice Chairman

Gopala Dwarakanath, M.D., Clerk