

## **4000: TOBACCO AND SMOKING REGULATIONS**

### **TOBACCO USE REGULATIONS**

#### **4001. STATEMENT OF PURPOSE**

Exposure to environmental tobacco smoke presents a serious and substantial public health risk. There exists conclusive evidence that tobacco products cause cancer, respiratory diseases, various cardiac problems, allergies and irritations to the eyes, oral and nasal cavities are hazardous to persons with compromised immune systems, children and pregnant women. This has been proven for users, non-users and employees who are exposed to tobacco by products. The Provincetown Board of Health has adopted regulations, which will regulate smoking indoors within public places, work places, retail sales premises, restaurants, and prohibit tobacco vending machines.

#### **4002. AUTHORITY**

The Town of Provincetown pursuant to Massachusetts General Laws Chapter III, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of residents and visitors to Provincetown. These regulations are also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

#### **4003. DEFINITIONS**

The terms defined in M.G.L. c. 270, §22(a) are hereby incorporated into this regulation and the following additional words shall be defined as follows:

**MARIJUANA:** As defined in General Laws, Chapter 94G, section 1.

**MARIJUANA ACCESSORIES:** Equipment, products, devices or materials of any kind that are intended or designed for use in ingesting, inhaling or otherwise introducing marijuana into the human body, including but not limited-to the items identified as “drug paraphernalia” in Massachusetts General Laws, Chapter 94C, section 1(12).

**NICOTINE DELIVERY PRODUCT:** Any device or material of any kind used to inhale nicotine. This term shall include, but not be limited to e-cigarettes, e-cigars, and e-pipes.

**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 building, establishment, business, or restaurant or retail store, or the business agents or designees of the foregoing.

**PUBLIC PLACE:** An enclosed space that is open to and used by the general public, including but not limited to the following facilities: all those listed in M.G.L. c. 270, §22(b)(2) and (3), and licensed child care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, and lobbies accessible to the public; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels, motels, public restrooms; laundromats; hair salons; barbershops; retail stores; enclosed shopping malls; and any function rooms/halls for public meetings or public social functions.

**SMOKE/SMOKING:** The lighting of, or having in one's possession any lighted cigarette, cigar, pipe, Nicotine Delivery Product or Marijuana Accessory, or any other matter or substance that allows tobacco, nicotine or marijuana to be combusted and inhaled. The term smoking shall also include using or having in one's possession an activated Nicotine Delivery Product or Marijuana Accessory.

**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 General Laws Ch. 270, Sec. 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".

#### **4004. PROHIBITION OF SMOKING IN PUBLIC PLACES AND WORKPLACES**

1. Smoking and the use of Nicotine Delivery Products shall be prohibited in all public places, work spaces and workplaces, including but not limited to all Outdoor Spaces of food establishments, except as set forth in Section 4.2 below.
2. The smoking of tobacco and/or the use of nicotine delivery products may be allowed in the following areas:
  - a. Any place listed in M.G.L. c. 270, §22(c); and
  - b. The Outdoor Space of a food establishment, provided that all three of the following conditions are met:
    - i. The Outdoor Space complies with the requirements of G.L. c.270, §22(e) and 105 CMR 661.200;
    - ii. There is no food or beverage service to patrons in the Outdoor Space; and
    - iii. The Board of Health has certified in writing that conditions i and ii have been met. Such certification may be made, at the request of the applicant, in conjunction with the issuance of an annual Food Service Permit for the establishment, provided that proper documentation and opportunity for inspection is provided to Board of Health staff.
3. No person shall operate a Smoking Bar in the Town of Provincetown.

#### **4005. VIOLATIONS AND PENALTIES**

This Regulation may be enforced as follows:

## **1. Non-Criminal Disposition**

This regulation may be enforced by any Town police officer, enforcement officer(s), or agents of the Town's Board of Health.

Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to the following penalties:

First Offense:	Written warning
Second Offense:	\$100 fine
Third Offense:	\$200 fine
Fourth or Subsequent Offense:	\$300 fine

Subsequent offenses shall be determined as offenses occurring within two years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

## **2. Permit Suspension or Revocation**

Following a third offense within two years calculated from the date of the first noticed offense, the Board of Health, after a public hearing conducted in accordance with the procedures set forth in 105 CMR 590.14, may suspend or revoke the food permit of any Food Establishment failing to comply with this regulation.

## **3. Other**

Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

Any penalty imposed under this Regulation for the possession of Marijuana shall be in addition to any civil penalty that may be imposed pursuant to Massachusetts General Laws, Chapter 94C, section 32L.

## **4006. 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.

**4007. REVISIONS AND EFFECTIVE DATE**

Revisions effective May 15, 1998

Revisions effective May 28, 1998.

Revisions effective October 1, 2002.

Revisions effective May 25, 2006.

Revisions effective September 21, 2006

Revisions effective October 16, 2014.

Revisions effective March 1, 2016.

This regulation was adopted in its entirety on May 31, 2018 with an effective date of June 14, 2018.

## **4100. TOBACCO PRODUCT SALES**

### **4101. 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 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 MMWR 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 (Id.); 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 to minors, access by minors to tobacco products is a major problem;

Now, therefore it is the intention of the Provincetown Board of Health to regulate the sale of tobacco products as defined herein.

### **4102. AUTHORITY**

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

### **4103. 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.

**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.

**CHARACTERIZING FLAVOR:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

**COMPONENT PART:** Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

**CONSTITUENT:** An ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

**DISTINGUISHABLE:** Perceivable by either the sense of smell or taste.

**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 who use the services of one (1) or more employees.

**FLAVORED TOBACCO PRODUCT:** Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

**MINIMUM LEGAL SALES AGE:** 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, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

**PERMIT HOLDER:** Any person engaged in the sale or distribution of tobacco and/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:** 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, restaurant 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 to consumers, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the

entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Provincetown 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.

**SMOKE CONSTITUENT:** Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco additives or other component of the tobacco product.

**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, regardless of nicotine content, 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 or any other tobacco product, as defined herein.

#### **4104. TOBACCO SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE PROHIBITED:**

1. 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; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Provincetown is 21.

#### 2. Required Signage

- a. A sign containing the following language 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:

Whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of twenty-one (21) or, not being his parent or guardian, gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of twenty-one (21) shall be punished by a fine of not less than one hundred dollars for the first offense, not less than two hundred dollars for a second offense and not less than three hundred dollars for any third or subsequent offense.

3. The notice shall be provided by the Provincetown 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.
4. Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of one of the government-issued photographic identification methods set forth below containing the bearer's date of birth. Verification is required for any person under the age of 27.
  - a. A liquor purchase identification card issued pursuant to section 34B of Chapter 138 of the General Laws;
  - b. A motor vehicle license issued pursuant to section eight of chapter ninety of the General Laws;
  - c. An identification card issued under section 8E of chapter 90 of the General Laws;
  - d. A valid passport issued by the United States government, or by the government, recognized by the United States government, of a foreign country; or
  - e. A valid United States issued military identification card.

#### **4105. TOBACCO PRODUCT SALES PERMIT**

1. No person shall sell or otherwise distribute any tobacco products, as defined herein, within the town of Provincetown without first obtaining a Tobacco Product Sales Permit issued annually by the Provincetown Board of Health. Only owners of establishments with a permanent, non-mobile location in Provincetown are eligible to obtain a permit and sell or distribute tobacco products, as defined herein, at the specified location in Provincetown.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Provincetown 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 nicotine delivery products and this regulation.
3. Each applicant shall provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Provincetown 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. No Tobacco 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/or 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 and federal laws.
8. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.
9. A Tobacco 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.
10. 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.
11. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's agreement to abide by the current Massachusetts Department of Revenue list for minimum retail prices of tobacco products, including multiple pack sales.
12. 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 has not satisfied any outstanding permit suspensions.

#### **4106. PROHIBITION OF THE SALE OF BLUNT WRAPS**

No person shall sell or distribute blunt wraps within Provincetown or possess blunt wraps within Provincetown with the intent to sell or distribute them.

#### **4107. CIGAR SALES REGULATED**

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.

3. This Section shall not apply to:

- a. The sale or distribution of any single 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 Provincetown.

4. The Provincetown 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.

#### **4108. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, except in retail tobacco stores.

#### **4109. FREE DISTRIBUTION AND COUPON REDEMPTION**

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. 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.

#### **4110. OUT-OF-PACKAGE SALES**

The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited. 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.

#### **4111. SELF-SERVICE DISPLAYS**

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

#### **4112. VENDING MACHINES**

All vending machines containing tobacco products, as defined herein, are prohibited.

#### **4113. NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES**

All non-residential Roll-Your-Own machines are prohibited.

#### **4114. EDUCATIONAL INSTITUTIONS**

No educational institution located in Provincetown 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.

#### **4115. VIOLATIONS AND PENALTIES**

Article 2 of this Regulation may be enforced as follows:

##### **1. Non-Criminal Disposition**

This regulation may be enforced by any Town police officer, enforcement officer(s), or agents of the Town's Board of Health.

Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law. If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to the following penalties:

First Offense:	\$100 fine
Second Offense:	\$200 fine
Third Offense:	\$300 fine
Fourth or Subsequent Offense:	\$300 fine

Subsequent offenses shall be determined as offenses occurring within two years of the date of the first noticed offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

##### **2. Permit Suspension or Revocation**

In addition to the monetary penalties set forth herein, the Board of Health may suspend or revoke any permit issued pursuant to these regulations for any violation of these regulations, or any other applicable General Law, regulation or by-law. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.

All tobacco products and nicotine products shall be removed from the permit holder's place of business for the duration of any suspension issued pursuant to this regulation. Failure to remove all tobacco products and nicotine products and/or the sale of delivery of tobacco products and nicotine products during suspension shall constitute separate offenses.

### **3. Other**

Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the district court, except as may be otherwise provided by law, and as the district court may see fit to impose. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

The Board of Health may employ the remedies set forth in G.L. c. 270, Sec. 6 for violations of provisions relating to the sale of tobacco products to minors.

The Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

#### **4116. 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.

#### **4117. EFFECTIVE DATE**

This regulation shall take effect on June 14, 2018.