Regulations of the Amherst Board of Health
Tobacco Sales Permits and Sale of Tobacco Products to Minors

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 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 products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the Amherst Board of Health to curtail the access of tobacco products by minors.

B. Authority:

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

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

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

Employee: An individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who perform a service in the employer's workplace for more than a *de minimus* amount of time.

Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees at 1 or more workplaces, at any 1 time, including the town of Amherst.

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

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 or any person who is required to apply for a tobacco 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 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.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms, and any non-FDA approved nicotine delivery systems such as electronic cigarettes.

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

D. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco at retail within Amherst without first obtaining a tobacco sales permit issued annually by the Amherst Board of Health.

2. A permit may only be issued to owners of establishments with a permanent, non-mobile location in Amherst and tobacco products may only be sold at the specified location authorized by the permit.

3. As part of the tobacco sales permit application process, the applicant will be provided with the Amherst 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 sales regarding both state laws regarding the sale of tobacco and this regulation.

4. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

5. The fee for a tobacco sales permit shall be determined by the Amherst Board of Health and published in the Town of Amherst website. All such permits shall be renewed annually by January 31.

6. A separate permit is required for each retail establishment selling tobacco.

7. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.

8. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation 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 laws.

9. A tobacco sales permit is non-transferable. A new owner of an establishment that sells tobacco must apply for a new tobacco sales 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 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. A tobacco sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

E. Tobacco Sales to Minors Prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor.

2. No person, other than the minor's parent or legal guardian, shall give tobacco products to a minor.

3. 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 Amherst 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.

4. 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 under the age of 27.

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

F. Free Distribution:

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

G. Out-of-Package Sales:

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.

H. Self Service Displays:

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

I. Tobacco Vending Machines:

All tobacco vending machines are prohibited.

J. Violations:

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.

2. Fines and Suspensions. Violations of these regulations shall result in fines and suspensions as set forth below:

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

b. In the case of a second violation within twenty-four (24) months of the date of the previous violation, a fine of two hundred dollars ($200.00) and the tobacco sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more violations within a twenty-four (24) month period, a fine of three hundred dollars ($300.00) and the tobacco sales permit shall be suspended for fourteen (14) consecutive business days.

d. In the case of a fourth or subsequent violation within a twenty-four (24) month period, a fine of three hundred dollars ($300.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

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

f. 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.

3. The Amherst Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. After a hearing, the Amherst Board of Health shall suspend the tobacco sales permit if the Board finds that a sale to a minor occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

K. Enforcement:

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

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.

In addition to civil penalties, the Board may seek equitable relief to enjoin any violation of these regulations.

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

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

L: Severability:

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

M. Effective Date:

This regulation as amended shall be effective as of January 1, 2011.

Originally passed by unanimous vote of the Amherst Board of Health on April 23, 2009.

Reviewed and amended October 26, 2010.

Board of Health Members:

David Ahlfeld, Chairman

Maria Bulzacchelli

Nancy Gilbert

David Kaufman M.D.