

REGULATIONS OF THE HOLYOKE BOARD OF HEALTH

SALE AND USE OF E-CIGARETTES

Section 1: Statement of Purpose

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; the U.S. Food and Drug Administration has conducted laboratory tests finding e-cigarettes contain toxic chemicals and carcinogens; the appeal created by e-cigarettes, which contain addictive nicotine, can lead minors into a nicotine addiction that may result in their daily use of tobacco; e-cigarettes seriously compromise current laws governing indoor smoking bans including, but not limited to, the Smoke-Free Workplace Law (MGL Ch. 270, §22) and the Education Reform Act (MGL Ch. 71 §§ 2A, 37H); and the City of Holyoke wants to protect its youth against the use of an untested nicotine product and its residents against the involuntary exposure of vapors from this untested nicotine product; now, therefore it is the intention of the Holyoke Board of Health to curtail the access and use of e-cigarettes.

Section 2: Authority

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

Section 3: Definitions

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

Business: Any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, engineering, architectural or other professional services are delivered.

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.

E-Cigarette: Any electronic device 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 any liquid or solid, to simulate smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: Any individual who performs services for an employer.

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

Liquid Nicotine: Any product composed either in whole, or in part, of nicotine and manufactured for use with e-cigarettes.

Retailer: An individual, business, employer, employee, retail store manager or owner engaged in the sale of e-cigarettes and or liquid nicotine.

Permit Holder: An owner or operator of any establishment engaged in the sale of tobacco products that applies for and receives a *Tobacco Sales Permit*, 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 e-cigarettes directly to consumers.

Tobacco Products: Any good that is used to contain or is composed of material from plants of the genus *Nicotiana*, or contains the chemical nicotine, including, but not limited to, cigarettes, cigars, tobacco rolling papers, tobacco leaves, liquid nicotine, nicotine gum, and e-cigarettes.

Section 4: E-Cigarette Sales to Persons Under Twenty One (21) Prohibited:

- 4.1 No person shall sell or permit e-cigarettes or liquid nicotine to be sold to a person under the age of twenty one (21).
- 4.2 **Identification:** Each person selling or distributing e-cigarettes or liquid nicotine 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 twenty one (21) years old or older. Verification is required for every potential purchaser.
- 4.3 All retail sales of e-cigarettes and/or liquid nicotine must be face-to-face between the seller and the buyer.

Section 5: Free Distribution/Sampling

No person shall distribute, or cause to be distributed, any free samples of e-cigarettes or liquid nicotine. No person shall permit any sampling of an e-cigarette or liquid nicotine.

Section 6: Public Uses Prohibited

The use of e-cigarettes is hereby prohibited in the City of Holyoke in locations and establishments covered by M.G.L Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law), and by the Regulations of the Holyoke Board of Health: Smoking in Public Places.

Section 7: Violations

7.1 Violations of Section 4:

- A. It shall be the responsibility of the retailer or his or her business agent to ensure compliance with Section 4 of this regulation pertaining to the sale and distribution of e-cigarettes and liquid nicotine. The violator shall receive:
- i. In the case of a first violation, a fine of one hundred dollars (\$100.00)
 - ii. In the case of a second violation within 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and any or all Board of Health issued permits or licenses shall be suspended for three (3) consecutive business days.
 - iii. In the case of a third violation within a 24 month period, a fine of three hundred dollars (\$300.00) and any or all Board of Health issued permits or licenses shall be suspended for seven (7) consecutive business days.
 - iv. In the case of a fourth violation within a 24 month period, a fine of three hundred dollars (\$300.00) and any or all Board of Health issued permits or licenses shall be suspended for fourteen (14) consecutive business days.
 - v. In the case of a fifth violation within a 24 month period, a fine of three hundred dollars (\$300.00) and any or all Board of Health issued permits or licenses shall be suspended for thirty (30) consecutive business days.
 - vi. In the case of a sixth violation within a 24 month period, a fine of three hundred dollars (\$300.00) and any or all Board of Health issued permits or licenses shall be suspended for a minimum of six (6) months and a maximum of twelve (12) months.
- B. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of any or all Board of Health-issued permits or licenses for thirty (30) consecutive business days.

C. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of products whose sale is under suspension 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.

D. The Holyoke Board of Health shall provide notice of the intent to suspend any Board of Health issued permit or license, 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 Holyoke Board of Health shall suspend the subject Board of Health- issued permit(s) or license(s) 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.

7.2 Violations of Section 5:

A. It shall be the responsibility of the retailer or his or her business agent to ensure compliance with Sections 5 of this regulation pertaining to the free distribution and sampling of e-cigarettes or liquid nicotine. The violator shall receive:

- i. In the case of a first violation, a fine of one hundred dollars (\$100.00)**
- ii. In the case of a second violation within 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00)**
- iii. In the case of three or more violations within a 24 month period, a fine of three hundred dollars (\$300.00)**

7.3 Violations of Section 6:

A. It shall be the responsibility of the owner, manager, or other person in control of a building, vehicle or vessel to ensure compliance with Section 6 of this regulation pertaining to the use of e-cigarettes. The violator shall receive:

- i. One hundred dollars (\$100) for the first violation**

- ii. Two hundred dollars (\$200) for a second violation occurring within two (2) years of the date of the first offense
- iii. Three hundred dollars (\$300) for a third or subsequent violation occurring within two (2) years of the second violation
- iv. If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance, the Board of Health may revoke or suspend the license to operate and shall provide notice of the intent to suspend such license, 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 owner, manager 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. 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.

B. An individual or person who violates Section 6 by using an e-cigarette in a place where smoking is prohibited shall be subject to a penalty of one hundred dollars (\$100.00).

C. Violations may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.

7.4 Each calendar day on which a violation occurs shall be considered a separate offense.

7.5 This regulation shall be enforced by the Board of Health or its designees.

7.6 Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent

Section 8: 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.

Section 9: Enforcement

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

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

Section 10: 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.

Section 11: Effective Date

This Regulation shall become effective as of June 11th, 2015.

Patricia A. Mertes, APRN, Chair
Robert S. Mausel, MD, Vice Chair
Dalila Hyry-Dermith, Clerk
Brian Fitzgerald, Director of Health

6/11/15 - Robert Mausel