

## TOWN OF AYER BOARD OF HEALTH Minutes of March 26, 2018



Meeting was called to order at 5:34 pm by *Chair* Pamela Papineau.

Members present included: *Chair* Pamela Papineau, *Clerk* Mary Spinner, *Member* Patricia Peters, and *Administrative Assistant* Jane Morriss. *Also attending were* Chad Fox, Digital Cloudz Vape Shop; and Joan Hamlett, representing the Central Region Alcohol and Tobacco Control Alliance.

Meeting was NOT recorded by APAC

PUBLIC INPUT: Mary Spinner recognized Bill Mauro and the Mauro family for the annual charity fundraiser they hold in conjunction with Super Bowl Sunday. The family donated part of the proceeds of the 2018 Super Bowl fundraiser to the NABOH Hospice program. The Mauro family owns Tiny's Restaurant.

TOBACCO ALLIANCE REPORT (TOBACCO AGENT JOAN HAMLETT): As she promised at the last meeting, Joan Hamlett of the Tobacco Alliance provided the Board with a color-coded version of an updated tobacco regulation for the Board's consideration. Once the Board decides what it is going to do, J. Hamlett will solicit the opinions of the tobacco vendors in Ayer. Copies will also be given to the BOS and the Town Administrator. Although the Board is not required to hold a public hearing, the **members tentatively decided it would hold a public hearing as a courtesy on Monday, April 18.** J. Hamlett will write up the notice and send it to J. Morriss, who will post it in the April 6 and 13<sup>th</sup> editions of *The Nashoba Valley Voice*. J. Morriss has already notified Carly Antonellis and has reserved the BOS meeting room for the public hearing. The proposed regulation suggests changing the legal smoking age from 18 to 21. Chad Fox, proprietor of Digital Cloudz Vape Shop, suggested that the age should remain at 18 because it encourages illegal behavior in those who are between the ages of 18 and 21, as anyone with a car can drive to New Hampshire, and anyone with a computer can buy products on-line, forcing smokers in the 18-21 age bracket to get products from unknown sources. The proposed regulation also addresses all of the alternative delivery systems that have been introduced since the adoption of the current regulation 10 years ago.

**M. Spinner made a motion to present a draft version of the proposed regulation to be presented at the Public Hearing April 30, changing the minimum smoking age from 18 to 21; capping the number of local permits to no more than 2 above the number that are permitted as of the date the new regulation goes into effect; and deleting the provision that would dictate the minimum distance of retailers from one another. T. Peters seconded the motion. The Board voted unanimously to these directives that were then given to J. Hamlett. 3/0A**

INFORMATION SHARING ABOUT EPA AND MASSDEP LIMITS ON PFAS (P. PAPINEAU): The Board discussed what is known about PFOAs and PFOAs in the drinking water. After their review, they decided the science will need to "play itself out" before setting permissible levels for these ubiquitous substances present in Teflon®, fire-retardant fabrics, and now our drinking water.

REVIEW OF MINUTES: M. Spinner made a motion to approve the minutes covering the meetings of March 12, as amended, and P. Peters 2<sup>nd</sup>. **The minutes were accepted, unanimously, as amended, 3/0A.**

NABOH MATERIAL (B. BRALEY): None

ADMINISTRATIVE MATTERS: **Mail:** Letter from MassDEP to the Town Administrator regarding the final inspection of the Spectacle Pond Well 2 replacement conducted Feb. 26; two insurance claims; a notice from the Central Mass. Mosquito Control Project informing the Board that larval mosquito control has commenced; and a letter from MassDEP to Frank Schofield of F&M Reality, notifying us of the transfer of a Permit of a large handling facility from J.P. Routhier and Sons, Inc., to FBS Tire Recycling, Inc. The Board also discussed what it would do about the letter, dated February 26, that was sent to Ruth Maxant-Schulz regarding the status of her property as a farm. The letter, which was mailed on February 27, gave Ms. Schulz until March 30<sup>th</sup> to respond. P. Papineau will follow-up with a registered letter after March 30, which will be clear about fining options should she be non-responsive and non-compliant. **Miscellaneous:** The Board agreed that it would purchase a laptop for Animal Inspector C. Purdy, as per C. Knox's recommendation. P. Papineau will give a status report at the next meeting. Action Items for April 9 meeting: M. Spinner will report about the executive Board Meeting of the NABOH; A discussion about taking permit fees out of our regulations and freshening up our animal regulation.



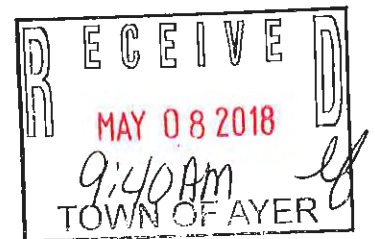
**Action items for April 9 meeting:** Planning for a proposed public hearing on new regulation restricting the sale of tobacco products tentatively scheduled for April 16; talk about possible updates to our Keeping of Animals and Fowl regulation; and a discussion about whether the Board should draft a local BOH regulation regarding the sale of recreational cannabis.

ADJOURN: M. Spinner motioned to adjourn the meeting at 7:45 pm, and P. Peters 2<sup>nd</sup>. **3/0**

  
Pam Papineau, *Chair*

  
Mary Spinner, *Clerk*

  
Patricia Peters, *Member*



## SAMPLE REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS

### THIS MODEL REGULATION INCORPORATES THE FOLLOWING:

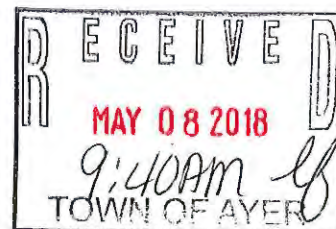
1. The minimum standards required pursuant to the United States Food and Drug Administration regulations and the Attorney General's regulations on the sale of tobacco;
2. M.G.L. Chapter 270, Sections 6 and 7;
3. Expanded language to include non-regulated nicotine delivery products in the definition of tobacco products for the purposes of this regulation;
4. Requirement that cigars be sold in original packs of 2 or more and be priced for retail sale at \$5 or more;
5. Ban of tobacco product sales, as defined in this regulation, in educational institutions and in health care institutions;
6. Expanded language to regulate nicotine delivery products and electronic cigarettes as tobacco products;
7. An additional retail sign requirement regarding smoking cessation, currently being used by Boston;
8. Language restricting the sale of flavored tobacco products to smoking bars and retail tobacco stores;

### INSTRUCTIONS FOR USE:

1. Fill in [city or town] name;
2. If measure is to be a by-law or an ordinance, (a) replace "regulation" with "by-law" or "ordinance"; (b) remove references to "board of health"; and (c) remove "Authority" section.
3. Fill in effective date;
4. If sections are removed, re-letter/re-number accordingly.

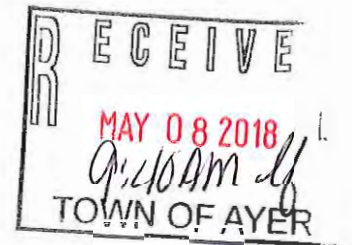
### CHECKLIST FOR POLICY DECISIONS (circle decisions):

- |  |                           |             |
|--|---------------------------|-------------|
| 1. Definition of tobacco products includes nicotine delivery products                            | YES                       | NO          |
| 2. Include cessation sign requirement  | YES                       | NO          |
| 3. Include minimum cigar package size/price (§F)   | YES                       | NO          |
| 4. No permit renewal if outstanding fines exist (§E.9)   | YES                       | NO          |
| 5. No permit renewal if three sales to under MLSA (§E.10)  | YES                       | NO          |
| 6. Cap and/or reduce number of permits (§E.11)   | YES                       | NO          |
| 7. No sales within 500 feet of a school (§E.12)  | YES                       | NO          |
| 8. No new permits within ___ feet of existing permit   | YES                       | NO          |
| 9. Restrict flavored tobacco products (§G)   | YES                       | NO          |
| 10. Minimum legal sales age for tobacco products (§D)  | 18                        | 21          |
| 11. Ban blunt wraps (§H)   | YES                       | NO          |
| 12. Ban free distribution of tobacco products & redemption of coupons (§I)                       | Already Have but expanded |             |
| 13. Ban out of package sales (§J)  | Already have but expanded |             |
| 14. Ban self-service displays (§K)   | Already Have              |             |
| 15. Ban vending machines (§L)  | Already Have              |             |
| 16. Ban Non-Residential RYO machines (§M)  | YES                       | NO          |
| 17. Ban tobacco product sales in health care institutions (§N)                                   | YES                       | NO          |
| 18. Ban tobacco product sales in educational institutions (§O)                                   | YES                       | NO          |
| 19. Fining structure mirrors state law (§P) OR FLAT FINE   | 100/200/300               | 300/300/300 |
| 20. Tolling periods for violations (§P.1.b and c) You have 18 months                             | 24 months                 | 36 months   |
| 21. Suspension Period – Maintain or Double Lengths   | 7/30 days                 | 14/60 days  |
| 22. "Shall" vs. "May" language for suspensions<br>(3 instances found in §§P.1.b, Q.1.c. and Q.4) | Already Have Shall        |             |





**Regulation of the [city/town] Board of Health  
Restricting the Sale of Tobacco Products**



**A. 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<sup>1</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence.<sup>4</sup>

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers<sup>5</sup>;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;<sup>6</sup>

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11<sup>th</sup> grade males this rate was nearly 30 percent ;<sup>7</sup>

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives<sup>8</sup>.

Whereas cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth<sup>9</sup>;

Whereas the [most recent year] Youth Risk Behavioral Survey (YRBS) results show that \_\_\_% of [city/town] high school students had smoked cigars, cigarillos, or little cigars on at least one day of the 30 days before the

<sup>1</sup> Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: [http://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

<sup>3</sup> U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>5</sup> *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

<sup>6</sup> SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

<sup>7</sup> CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: [www.cdc.gov](http://www.cdc.gov).

<sup>8</sup> IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

<sup>9</sup> CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.



survey, compared with \_\_\_\_ % in [whatever past year is available]<sup>10</sup>; [USE IF LOCAL DATA POINTS EXIST OTHERWISE DELETE THIS STATEMENT].

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%<sup>11</sup>;

Whereas 59% of high school smokers in Massachusetts have tried flavor cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored;<sup>12</sup>

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;<sup>13</sup>

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,<sup>14</sup> largely because these flavored products were marketed to youth and young adults,<sup>15</sup> and younger smokers were more likely to have tried these products than older smokers<sup>16</sup>, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;<sup>17</sup>

<sup>10</sup> [city/town] [most recent year] Youth Risk Behavior Survey and [whatever past year is available] Youth Risk Behavior Survey.

<sup>11</sup> Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161-70. Retrieved from: [www.ncbi.nlm.nih.gov/pubmed/21809109](http://www.ncbi.nlm.nih.gov/pubmed/21809109).

<sup>12</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

<sup>13</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>14</sup> 21 U.S.C. § 387g.

<sup>15</sup> Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>16</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>17</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).



Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;<sup>18</sup>

Whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014;<sup>19</sup>

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them;<sup>20</sup>

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;<sup>21</sup>

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one;<sup>22</sup>

Whereas according to the CDC’s youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;<sup>23</sup>

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;<sup>24</sup>

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”;<sup>25</sup>

Now, therefore it is the intention of the [city/town] Board of Health to regulate the sale of tobacco products.

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<sup>18</sup> See fn. 3 at p. 85.

<sup>19</sup> Centers for Disease Control & Prevention. 2015. “Tobacco Use Among Middle and High School Students — United States, 2011–2014,” *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

<sup>20</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

<sup>21</sup> 310 CMR 30.136

<sup>22</sup> Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

<sup>23</sup> See fn. 7.

<sup>24</sup> King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], [www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract](http://www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract).

<sup>25</sup> *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

**B. Authority:**

This regulation is promulgated pursuant to the authority granted to the [city/town] Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

**C. Definitions:**

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

**Adult-only 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 but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the [city/town] Board of Health.

**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 regardless of any content.

**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:** Any 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.

**Coupon:** Any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

**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 that uses 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.

**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 is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

**Liquid Nicotine Container:** A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

**Listed or non-discounted price:** The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

**Minimum Legal Sales Age (MLSA):** 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 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.



Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco 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 or retail store.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

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.

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, §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: 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 products, as defined herein.

#### **D. 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 [city/town] is [AGE].

#### **2. Required Signage:**

- a. 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

[city/town] 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. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.06 (2) (e).

- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the [city/town] Board of Health that discloses current referral information about smoking cessation.
- c. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as “tobacco products”, at retail shall conspicuously post a sign stating that “The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of [AGE] years is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches 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. 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.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is [AGE] years old or older. Verification is required for any person under the age of 27.

4. 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.

#### **E. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the [city/town] of [city/town] without first obtaining a Tobacco Product Sales Permit issued annually by the [city/town] Board of Health. Only owners of establishments with a permanent, non-mobile location in [city/town] are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in [city/town].

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the [city/town] 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 product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the [city/town] 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. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, 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.
8. 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.
9. 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 the permit holder has not satisfied any outstanding permit suspensions.
10. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with §P.4.
11. Maximum Number of Tobacco Product Sales Permits.
  - a. At any given time, there shall be no more than **[number (XX)]** Tobacco Product Sales Permits issued in **[city/town]** (reduced by the number of permits not renewed pursuant to subsection (b) below)]. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health.
  - b. As of **[date]**, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the **[city/town]** Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph 11(a) shall be reduced by the number of the retired permits. **[NOTE: If this subsection is included, remove the last sentence of section 11(a) AND add to the end of the first sentence of subsection (a) the following phrase: "...reduced by the number of permits not renewed pursuant to §12(b)."]**
  - c. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
  - d. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

**F. 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 [city/town].
4. The [city/town] 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.

**G. Sale of Flavored Tobacco Products Prohibited:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

**H. Prohibition of the Sale of Blunt Wraps:**

No person or entity shall sell or distribute blunt wraps in [city/town].

**I. Free Distribution and Coupon Redemption:** No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

**J. Out-of-Package Sales:**

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. 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.
2. A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the [city/town] Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."

**K. 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. **[Additional Compromise Language: The only self-service displays that are permissible pursuant to U.S. FDA and Massachusetts Attorney General regulations are displays that are located in Retail Tobacco Stores that ensure that no person younger than the MLSA is present, or permitted to enter, at any time.]**

**L. Vending Machines:**

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

**M. Non-Residential Roll-Your-Own Machines:**

All Non-Residential Roll-Your-Own machines are prohibited.

**N. Prohibition of the Sale of Tobacco Products by Health Care Institutions:**

No health care institution located in [city/town] shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

**O. Prohibition of the Sale of Tobacco Products by Educational Institutions:**

No educational institution located in [city/town] shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

**P. Incorporation of Attorney General Regulation 940 CMR 21.00:**

The sale or distribution to tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

**Q. Violations:**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:

- a. In the case of a first violation, a fine of at least one hundred dollars (\$100.00). **[NOTE: Fines can be higher than these suggested fines; however, if a fine is over \$300, non-criminal disposition cannot be used as an enforcement tool.]**
- b. In the case of a second violation within [24, 26] months of the date of the current violation, a fine of at least two hundred dollars (\$200.00) and the Tobacco Product Sales Permit [shall/may] be suspended for seven (7) consecutive business days.
- c. In the case of three or more violations within a [24, 26] month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit [shall/may] be suspended for thirty (30) consecutive business days.
- d. In the case of four violations or repeated, egregious violations of this regulation within a [24, 36] month period, the Board of Health shall hold a hearing in accordance with §Q.4 and may permanently revoke a Tobacco Product Sales Permit.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products 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.

4. The [city/town] Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product 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 therefor in writing. After a hearing, the [city/town] Board of Health [shall/may] suspend or revoke the Tobacco Product Sales Permit if the Board of Health 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, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

**R. 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.

S. **Separate Violations:** Each day any violation exists shall be deemed to be a separate offense.

T. **Enforcement:**

Enforcement of this regulation shall be by the [city/town] Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the [city/town] Board of Health or its designated agent(s) and the Board shall investigate.

U. **Severability:**

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.

V. **Effective Date:**

This regulation shall take effect on \_\_\_\_\_, 2016.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Municipal Tobacco Control Technical Assistance Program

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## MUNICIPALITIES BANNING SALE OF ELECTRONIC CIGARETTES TO MINORS

Abington	Dartmouth	Kingston	Norfolk	Stoughton
Acton*	Dedham*	Lancaster	<b>North Adams</b>	Stow
Adams*	Deerfield	Lanesborough	<b>Northampton*</b>	Sudbury*
Amherst*	Dighton*	Leverett*	North Andover*	Sunderland*
Andover*	Dover	<b>Lawrence</b>	No. Attleboro*	Sutton*
Arlington*	Dracut*	Lee*	Northborough	Swampscott*
Ashland	Duxbury	Leicester*	Northbridge	Swansea*
Athol*	Eastham*	Lenox*	North Reading*	<b>Taunton*</b>
<b>Attleboro*</b>	<b>Easthampton*</b>	<b>Leominster*</b>	Norton	Templeton*
Auburn*	Easton	Lexington*	Norwell	Tewksbury*
Avon	Edgartown*	Lincoln	Norwood	Tisbury
Barre*	Egremont	Littleton	Orange	Topsfield
Bedford	Essex	Longmeadow	Orleans*	Townsend*
Belchertown*	Everett	<b>Lowell*</b>	Oxford	Tyngsborough*
Bellingham	Fairhaven*	Ludlow*	<b>Peabody</b>	Wakefield*
Belmont	<b>Fall River</b>	Lynn*	Pembroke	Walpole*
Berkley	Falmouth	Lynnfield*	<b>Pittsfield*</b>	Wareham
<b>Beverly*</b>	<b>Fitchburg*</b>	<b>Malden</b>	Plainville*	Watertown*
Billerica*	Foxboro*	Mansfield	Plymouth	Wayland
Blackston	Framingham	Marblehead*	Provincetown*	Webster
Bolton*	Franklin	<b>Marlborough*</b>	Randolph*	Wellesley
<b>Boston*</b>	<b>Gardner*</b>	Marion	Reading*	Wendell*
Bourne*	Gill*	Marshfield	<b>Revere</b>	Westborough
<b>Braintree</b>	<b>Gloucester*</b>	Mashpee	Rochester*	West Boylston
Brewster*	Grafton*	Maynard*	Rockport	<b>Westfield*</b>
Bridgewater*	Granby	Medfield*	<b>Salem*</b>	Westford*
Brimfield	Great Barrington*	<b>Medford*</b>	Sandwich	Westminster*
<b>Brockton</b>	<b>Greenfield*</b>	Medway*	Saugus*	Weston
Brookline*	Groton	<b>Melrose</b>	Scituate	Westport*
Buckland*	Hadley*	Mendon	Seekonk	<b>W. Springfield</b>
Burlington*	Halifax*	<b>Methuen*</b>	Sharon	Westwood*
<b>Cambridge*</b>	Hamilton	Middleboro	Shelburne*	<b>Weymouth*</b>
Canton	Hanover	Middleton*	Sherborn*	Whately*
Carver	Harvard	Milford*	Shrewsbury*	Williamstown
Charlemont*	Harwich	Millbury	Somerset*	Wilmington
Chatham*	Hatfield*	Millis	<b>Somerville*</b>	Winchendon
<b>Chelsea</b>	<b>Haverhill*</b>	Milton	Southborough	Winchester*
<b>Chicopee</b>	Hingham	Montague*	Southbridge	Winthrop
Chilmark	Holbrook*	Nantucket	South Hadley*	<b>Worcester*</b>
Clinton	Holden*	Natick	Southampton*	Wrentham
Cohasset*	<b>Holyoke*</b>	<b>Needham*</b>	Southwick*	<del>Yarmouth*</del>
Concord	Hubbardston*	<b>New Bedford*</b>	Spencer	
Dalton	Hudson*	<b>Newburyport*</b>	Stockbridge*	
Danvers	Hull*	<b>Newton*</b>	Stoneham	

- 1) These **217** cities and towns ban the sale of electronic cigarettes/nicotine delivery products, to minors.
- 2) This policy regulates retail practices such as permitting, vending machines & self-service displays.
- 3) 84% of state population (**cities in bold**, towns in normal font)
- 4) \* Indicates those 130 municipalities (56% of state's population) that have also enacted a policy where e-cigarette use is banned in locations, such as workplaces and restaurants, where traditional smoking is banned in accordance with the state's Smoke-free Workplace Law and any applicable municipal policies.

11/15/17

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## LOCAL POLICIES RESTRICTING FLAVORED "OTHER TOBACCO PRODUCTS" (OTP) TO ADULT-ONLY RETAILERS

### MUNICIPALITY AND EFFECTIVE DATE

Andover	6/1/17	Easton	5/1/16	Marlboro	9/1/15	Saugus	7/5/16
Amherst	8/15/15	Essex	8/1/16	Marshfield	9/1/15	Shelburne	11/15/15
Arlington	3/1/15	Everett	5/1/17	Maynard	9/1/16	Sherborn	9/25/14
Ashland	1/1/15	Fairhaven	1/1/15	Medfield	1/1/16	Somerville	3/15/16
Athol	10/1/16	Fitchburg	3/1/17	Medford	7/10/17	Southampton	3/1/16
Attleboro	1/1/16	Gardner	3/1/17	Melrose	1/4/16	So. Hadley	6/1/16
Avon	7/1/15	Gill	9/1/15	Methuen	9/1/15	Spencer	1/1/18
Bedford	1/1/18	Gloucester	5/1/18	Middleton	10/1/16	Stow	6/1/17
Belmont	1/1/15	Grafton	9/1/16	Millis	11/1/15	Sudbury	7/1/17
Beverly	8/1/17	Granby	2/1/15	Montague	7/1/15	Sunderland	1/4/16
Billerica	10/1/16	Greenfield	7/1/15	Natick	9/1/15	Templeton	10/1/16
Boston	2/15/16	Groton	10/1/17	Needham	1/1/16	Tewksbury	6/1/16
Brockton	9/26/16	Hadley	3/15/16	Newburyport		Townsend	9/1/16
Brookline	Spr. 2017	Halifax	3/15/16	Newton	9/22/14	Tyngsboro	1/11/16
Buckland	3/15/16	Hamilton	10/1/16	No. Adams	8/1/16	Wakefield	1/4/16
Cambridge	6/1/15	Harvard	12/1/17	No. Andover	1/5/15	Walpole	7/1/15
Canton	1/1/18	Hatfield	1/1/15	No. Attleboro	7/1/16	Wareham	4/1/16
Carver	7/1/14	Holden	7/31/17	Northampton	1/1/17	Watertown	3/1/15
Charlemont	10/15/15	Holyoke	11/3/16	No. Reading	9/1/16	W. Boylston	3/14/17
Chelsea	3/15/16	Lanesboro	3/9/15	Norwell	3/31/16	Westford	7/1/16
Clinton	7/1/17	Leominster	3/1/17	Orange	8/1/17	Whately	9/1/15
Cohasset	6/1/16	Leverett	3/1/15	Orleans	11/1/16	Williamstown	1/5/15
Concord	11/1/14	Lowell	10/1/16	Pittsfield	11/1/16	Winchendon	10/1/16
Dedham	10/1/16	Ludlow	6/1/16	Provincetown	3/1/16	Winchester	7/1/15
Deerfield	1/1/17	Lynnfield	8/15/15	Reading	8/1/17	Yarmouth	7/1/14
Duxbury	2/1/15	Malden		Salem	3/1/17		
Easthampton	1/1/18	Marblehead	7/1/16	Sandwich	6/1/17		

106 Municipalities (26 Cities in Bold)

47.7% of state's population lives in listed municipalities (3,124,398 of 6,547,629 residents)

In June of 2009, the federal government, recognizing the damaging role flavored tobacco products play in encouraging youth initiation, banned the sale of flavored cigarettes, except for menthol flavoring. In July of 2009, the state of Maine extended that federal ban to include cigars. In January 2012, the Providence city council enacted a city ordinance to mimic and extend the federal ban to include all OTP (Other Tobacco Products), such as cigars, smokeless and chew tobacco, as well as to include electronic cigarettes, except in qualifying adult-only retail locations. Providence was sued in federal court and in February 2013 prevailed at the U.S. Court of Appeals. This is notable as we are in the same federal court district as Rhode Island. Therefore, this ruling extends to Massachusetts. This policy recognizes that cheap, flavored tobacco products are attractive to youth, resulting in reported increase of such usage in Massachusetts and nationwide. The policy DOES prohibit the sale of all flavored tobacco products and flavored e-cigarette, except for in qualified retail tobacco stores and "smoking bars". This policy DOES NOT prohibit the sale of menthol tobacco products nor the sale of all e-cigarettes.

11/17/17



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## MUNICIPALITIES WITH MINIMUM PRICING FOR CIGARS

Abington	Easton**	Marshfield**	Scituate
Acton	Edgartown	Maynard**	Seekonk
Adams	Essex**	Medford	Shelburne**
Amherst**	Everett**	Medfield**	Sherborn*
Andover	Fairhaven**	Medway**	Shrewsbury**
Arlington	Falmouth	Melrose**	Somerset**
Ashburnham**	Fitchburg**	Mendon**	Somerville**
Ashland**	Franklin	Methuen**	South Hadley
Athol	Gardner**	Middleton**	Southampton**
Attleboro**	Gill**	Milford	Spencer**
Avon	Gloucester**	Millbury	Stockbridge**
Bedford**	Grafton**	Millis**	Stoughton
Belmont**	Granby**	Montague**	Stow**
Beverly**	Greenfield**	Natick**	Sudbury**
Billerica**	Groton**	Needham**	Sunderland**
Bolton**	Hadley**	Newburyport	Templeton**
Boston*	Halifax**	Newton**	Tewksbury**
Braintree	Hamilton**	North Adams**	Tisbury
Brewster	Harvard**	Northampton*	Townsend**
Bridgewater	Hatfield**	North Andover*	Tyngsborough**
Brimfield**	Holbrook**	North Attleboro**	Wakefield**
Brockton**	Holden**	North Reading**	Walpole**
Brookline**	Holyoke**	Norwell**	Wareham**
Buckland	Hubbardston**	Norwood	Watertown**
Cambridge	Hudson*	Orange**	Wayland**
Carver	Kingston**	Orleans**	Westport
Charlemont**	Lanesborough**	Oxford	W. Boylston**
Chatham**	Lawrence**	Peabody	Westford**
Chelsea**	Lee**	Pittsfield**	Whately**
Chilmark	Leicester*	Plainville**	Westwood*
Clinton**	Lenox**	Provincetown**	Weymouth*
Cohasset**	Leominster**	Reading**	Williamstown**
Concord**	Leverett**	Revere**	Winchendon**
Danvers**	Lowell*	Rochester	Winchester**
Dedham	Lynnfield**	Rockport	Winthrop*
Deerfield**	Malden**	Salem**	Yarmouth**
Duxbury**	Marion	Sandwich**	
Easthampton**	Marlborough**	Saugus*	

**58.7% of state's population lives in listed municipalities. (3,841,719 of 6,547,629 residents)**

- (1) **TOTAL: 151** - Cities in bold. First to enact: Boston on February 2, 2012.
- (2) **No asterisk (36):** These municipalities require that single cigars be sold for at least \$2.50; two-packs for at least \$5.00; three-packs for at least \$7.50 and 4-packs, or larger, at market rate (no minimum). **One asterisk (10):** These municipalities require the same pricing policy above but four-packs (or larger packs) must be sold for at least \$5.00 at retail, except Boston, Saugus, Winthrop are \$2.50 and not \$5.00. **Two asterisks (102):** These municipalities require single cigars be sold for at least \$2.50 and that all multi-packs be sold for at least \$5.00 at retail.
- (3) **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, Ch. 64C, §1, Para. 1.

11/17/17

# **Municipal Tobacco Control Technical Assistance Program**

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## **LOCAL SUMMARY ON TOBACCO SALES BANS IN PHARMACIES**

### **MUNICIPALITY - NUMBER OF AFFECTED RETAILERS:**

Abington* - 4	Concord* - 3	Haverhill* - 11	New Bedford* - 20	Stoughton - 6
Acton* - 4	Danvers - 9	Holbrook* - 3	Newton - 8	Stow - 1
Adams* - 2	Dartmouth* - 7	Holyoke* - 9	Newburyport - 4	Sudbury* - 3
Amherst* - 4	Dedham* - 9	Hubbardston - 0	North Adams - 5	Sunderland* - 0
Andover* - 3	Deerfield* - 6	Hudson - 5	Northampton - 8	Templeton* - 0
Arlington* - 6	Dracut* - 4	Hull - 1	N. Attleboro* - 7	Tisbury* - 2
Ashburnham* - 1	Duxbury* - 1	Kingston - 5	No. Reading* - 3	Townsend* - 2
Ashland* - 4	Eastham* - 0	Lawrence - 12	Northborough* - 5	Tyngsborough - 1
Athol* - 3	Easthampton* - 2	Lancaster - 0	Norwell* - 4	Wakefield - 4
Barnstable - 9	Easton - 4	Lanesborough - 1	Orange - 1	Walpole* - 5
Barre* - 1	Edgartown* - 1	Leverett - 0	Orleans* - 4	Wareham - 5
Bedford* - 3	Essex* - 0	Lowell - 11	Oxford - 3	Watertown* - 3
Belchertown* - 2	Everett - 5	Leominster* - 9	Pittsfield* - 11	Wayland* - 2
Beverly* - 7	Fairhaven* - 7	Lee* - 2	Reading* - 4	Wellesley - 4
Bolton - 0	Fall River - 22	Lenox* - 2	Revere - 6	Westboro - 3
Bourne - 2	Falmouth* - 7	Ludlow* - 3	Rochester* - 0	W. Boylston* - 2
Berkley - 0	Fitchburg* - 7	Lynn* - 12	Rockport* - 1	Westfield* - 7
Boston - 88	Franklin* - 6	Malden* - 8	Salem* - 6	Westford - 3
Braintree - 8	Gardner* - 7	Marion* - 0	Sandwich* - 4	Weston - 1
Brewster - 0	Gill* - 0	Marlboro* - 11	Saugus* - 7	Westport* - 2
Bridgewater - 3	Gloucester* - 5	Marshfield - 4	Scituate* - 3	Westwood - 2
Brimfield - 0	Grafton* - 0	Maynard - 1	Shelburne - 1	Weymouth* - 8
Brockton - 18	Granby* - 2	Medfield - 2	Sherborn - 1	Whately - 0
Brookline - 8	Gt. Barrington* - 4	Medford - 7	Shrewsbury - 8	Williamstown* - 1
Buckland* - 0	Greenfield* - 6	Medway - 2	Somerville - 10	Wilmington* - 5
Cambridge* - 13	Groton* - 2	Melrose* - 4	Southboro - 4	Winchendon* -
Carver* - 1	Hadley* - 4	Mendon* - 0	So. Hadley - 1	Winchester - 2
Charlemont* - 0	Halifax* - 2	Middleboro* - 3	Southampton - 1	W Springfield - 10
Chatham - 1	Hamilton* - 0	Middleton* - 2	Spencer* - 2	Worcester - 34
Chelsea* - 5	Harvard* - 0	Millis* - 1	Springfield - 23	Yarmouth* - 6
Clinton* - 3	Harwich - 3	Montague* - 1	Stockbridge* - 0	
Cohasset - 3	Hatfield - 0	Needham* - 4	Stoneham* - 3	

### **COMPANIES AFFECTED (WITH NUMBERS OF AFFECTED LOCATIONS) - TOTAL: 758**

CVS (239) Walgreens (112) Rite Aid/Brooks (112) Shaws Market (9) Star Market (2) Target (26) BJ's (4)  
Stop & Shop (59) Hannaford (10) Big Y (14) Independents (137) Price Chopper (6) Walmart (26) Costco (4) Kmart (4)

### **NOTES:**

- TOTAL: 160**
- \* indicates that electronic cigarettes and/or Nicotine Delivery Products are included in the sales ban.
- Cities in bold letters - Form of Local Measure: Health Regulations = 141; City Ordinances = 4; Town Bylaws = 1
- First municipality to enact: Boston effective 2/11/09; First city ordinance enacted: Newton effective 11/16/09; First town bylaw enacted: Brookline effective 4/9/12 (approved by Mass. Attorney General)
- Everett, Stoneham, W. Springfield: 1 pharmacy is both a retailer & wholesaler. Tobacco sales limited to wholesale clients.
- CVS, Target, Wegmans, Kmart: some stores may have pharmacies but these companies do not sell tobacco by company policy.
- 105 have not enacted this policy and have no pharmacies; 6 have not enacted this policy and have only a Target or a CVS.
- STATEWIDE COVERAGE:**  
68.6% of state's population lives in listed municipalities. (4,488,496 out of 6,547,629 residents)  
5.2% of state's population live in municipalities under Condition #7  
**Combined percentage total: 73.7%**

11/15/17

# Municipal Tobacco Control Technical Assistance Program

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## **MUNICIPALITIES THAT RESTRICT NEW RETAILERS NEAR EXISTING RETAILERS**

### **MUNICIPALITY:**

- |            |         |             |
|------------|---------|-------------|
| 1. Bedford | 2. Stow | 3. Townsend |
|------------|---------|-------------|

.46% of state's population (30,192 of 6,547,629 Massachusetts residents) **Cities in Bold.**

Earliest adoption: Townsend – 5/9/16

A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.

Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

11/14/17

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A Technical Assistance Project for cities and towns funded through a Massachusetts Department of Public Health grant to the Massachusetts Municipal Association.



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## MUNICIPALITIES BANNING SALE OF ELECTRONIC CIGARETTES TO MINORS

Abington	Dartmouth	Kingston	Norfolk	Stoughton
Acton*	Dedham*	Lancaster	<b>North Adams</b>	Stow
Adams*	Deerfield	Lanesborough	<b>Northampton*</b>	Sudbury*
Amherst*	Dighton*	Leicester*	North Andover*	Sunderland*
Andover*	Dover	<b>Lawrence</b>	No. Attleboro*	Sutton*
Arlington*	Dracut*	Lee*	Northborough	Swampscott*
Ashland	Duxbury	Leicester*	Northbridge	Swansea*
Athol*	Eastham*	Lenox*	North Reading*	<b>Taunton*</b>
<b>Attleboro*</b>	<b>Easthampton*</b>	<b>Leominster*</b>	Norton	Templeton*
Auburn*	Easton	Lexington*	Norwell	Tewksbury*
Avon	Edgartown*	Lincoln	Norwood	Tisbury
Barre*	Egremont	Littleton	Orange	Topsfield
Bedford	Essex	Longmeadow	Orleans*	Townsend*
Belchertown*	<b>Everett</b>	<b>Lowell*</b>	Oxford	Tyngsborough*
Bellingham	Fairhaven*	Ludlow*	<b>Peabody</b>	Wakefield*
Belmont	<b>Fall River</b>	<b>Lynn*</b>	Pembroke	Walpole*
Berkley	Falmouth	Lynnfield*	<b>Pittsfield*</b>	Wareham
<b>Beverly*</b>	<b>Fitchburg*</b>	Malden	Plainville*	Watertown*
Billerica*	Foxboro*	Mansfield	Plymouth	Wayland
Blackston	Framingham	Marblehead*	Provincetown*	Webster
Bolton*	Franklin	<b>Marlborough*</b>	Randolph*	Wellesley
<b>Boston*</b>	<b>Gardner*</b>	Marion	Reading*	Wendell*
Bourne*	Gill*	Marshfield	<b>Revere</b>	Westborough
<b>Braintree</b>	<b>Gloucester*</b>	Mashpee	Rochester*	West Boylston
Brewster*	Grafton*	Maynard*	Rockport	<b>Westfield*</b>
Bridgewater*	Granby	Medfield	<b>Salem*</b>	Westford*
Brimfield	Great Barrington*	Medford*	Sandwich	Westminster*
<b>Brockton</b>	<b>Greenfield*</b>	Medway	Saugus*	Weston
Brookline*	Groton	Melrose	Scituate	Westport*
Buckland*	Hadley*	Mendon	Seekonk	<b>W. Springfield</b>
Burlington*	Halifax*	Methuen*	Sharon	Westwood*
<b>Cambridge*</b>	Hamilton	Middleboro	Shelburne*	<b>Weymouth*</b>
Canton	Hanover	Middleton*	Sherborn*	Whately*
Carver	Harvard	Milford*	Shrewsbury*	Williamstown
Charlmont*	Harwich	Millbury	Somerset*	Wilmington
Chatham*	Hatfield*	Millis	<b>Somerville*</b>	Winchendon
<b>Chelsea</b>	<b>Haverhill*</b>	Milton	Southborough	Winchester*
<b>Chicopee</b>	Hingham	Montague*	Southbridge	Winthrop
Chilmark	Holbrook*	Nantucket	South Hadley*	<b>Worcester*</b>
Clinton	Holden*	Natick	Southampton*	Wrentham
Cohasset*	Uxbridge*	Needham*	Southwick*	Yarmouth*
Cohasset*	Hubbardston*	New Bedford*	Spencer	
Dalton	Hudson*	<b>Newburyport*</b>	Stockbridge*	
Danvers	Hull*	<b>Newton*</b>	Stoneham	

- 1) These 217 cities and towns ban the sale of electronic cigarettes/nicotine delivery products, to minors.
- 2) This policy regulates retail practices such as permitting, vending machines & self-service displays.
- 3) 84% of state population (cities in bold, towns in normal font)
- 4) \* Indicates those 130 municipalities (56% of state's population) that have also enacted a policy where e-cigarette use is banned in locations, such as workplaces and restaurants, where traditional smoking is banned in accordance with the state's Smoke-free Workplace Law and any applicable municipal policies.

11/15/17

# Boards of Health Tobacco Control Alliance

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## DRAFT FLAVOR INTRODUCTION Ayer BOH 3/12/2018

This packet contains documents that support a BOH regulation that would restrict candy and fruit flavored products to adult tobacco retailers, otherwise known as "smoke shops" where no one under the minimum sales age can enter and only tobacco and e-products and paraphernalia related to tobacco and e-products can be sold.

Documents include:

- A color-coded draft regulation
- BOH Flavor Points
- A municipal list of towns with flavor restriction, Cigar pricing, wrap ban, and capping.
- Misc. lists that are applicable

In the draft the cover page is a snapshot of what is new. Everything in blue is new, everything in black you already have. All blue components would be where the BOH would have to decide what they would include in the draft regulation for the hearing.

Other:

The Providence RI BOH did a flavor "ban" and was challenged in Federal Court. The Federal Court ruled that Boards of Health could restrict candy and fruit flavors, but that menthol/mint was exempt and that flavor could still be sold in adult tobacco retail shops. MA shares the same Federal Court. This ruling applies to MA as long as the exact same language is used regarding the definitions and flavor sections.

Multiple Communities around Berlin have successfully passed 21 as the minimum sales age (Maynard, Stow, Acton, Hudson, Concord, Marlborough, Westford, Northborough).

Maynard, Townsend, and Stow went through the process and passed the Flavor draft and selected the Minimum sales age of 21 with very few problems and no opposition. Clinton passed the Flavor draft, but kept the Minimum age at 18. It was passed and went into effect, Nov. 1, with very few problems and no opposition. Atty. DJ Wilson from Massachusetts Municipal Association or Atty. Cheryl Sbarra from MAHB are both available to come meeting to answer any questions or concerns. If the BOH decides to set a hearing date, we would assist in setting up the public hearing and DJ or Cheryl can come to the hearing to provide technical assistance to the BOH if an issue is brought up that needs clarification.

We believe that the timing is right for Berlin, Bolton, Boxborough, Ayer and Lancaster to consider this draft and believe that there would be a successful outcome in reducing youth use of candy and fruit flavored products.

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**The aim of this regulation is to restrict youth access to flavored tobacco products, not to prohibit adults from purchasing these products.**

This regulation is not a ban on the sale of flavored tobacco products. It allows sales in adult establishments such as retail tobacco stores and smoking bars.

Menthol and other mint-flavored products do not fall under this regulation.

Flavored tobacco products are considered to be “starter” products by the U.S Food and Drug Administration and U.S Surgeon General that aid in the establishment of smoking patterns that can lead to a long-term addiction.<sup>1</sup>

Over 90% of adult smokers started before they were eighteen years old.<sup>2</sup>

Tobacco companies use flavorings in smokeless tobacco products as part of a “graduation strategy” to encourage new users to start with flavored products with lower levels of nicotine and work their way up to more addictive products.<sup>3</sup>

If we do not take measures to protect them, 117,000 young people alive today will die early from tobacco-related illnesses.<sup>4</sup>

**Flavored products are targeted to youth.**

The Family Smoking Prevention and Tobacco Control Act (FSPTCA) is a federal law that prohibit the use of flavored cigarettes. The prohibition was established because tobacco companies were marketing flavored cigarettes specifically to minors, who were more likely to have tried these products than older smokers.<sup>5, 6, 7</sup>

The FSPTCA does not restrict the sale of flavored little cigars, a popular cigarette alternative among youth. These products are still manufactured and sold at a very low cost, in colorful packaging, and in a variety of candy and fruit flavorings.

Currently, these products are widely available at corner stores and other retailers that youth frequent. They are often displayed at the checkout counter and other highly visible locations within the store right next to candy.

**Flavored products are more popular among minors than among adults.**

Sales of low-cost, flavored little cigars increased by 23% between 2008 and 2010, and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black and Mild, White Owl, and Swisher Sweets.<sup>8, 9</sup>

45.6% of high school smokers in Massachusetts use flavored cigarettes (menthol) or flavored cigars.<sup>10</sup>

Younger smokers are more likely than adults to have tried flavored tobacco products, including cigars, cigarillos, and hookah.<sup>11</sup>

**Electronic cigarettes are included in the regulation on flavored products.**

Electronic cigarettes are widely available and are gaining in popularity among youth. Use of e-cigarettes among middle and high school students doubled from 2011-2012.<sup>12</sup>

There is no statewide age restriction on e-cigarettes, so children of all ages can purchase them.

**Make smoking history.**  
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Nicotine is highly addictive, especially to children.<sup>13</sup>

E-cigarettes are unregulated, so the level of nicotine they contain varies greatly. They often contain over 10mg of nicotine, a lethal dose in children.<sup>14</sup>

E-cigarettes are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum.<sup>14</sup> E-hookah “pens” are e-cigarettes sold in colorful packaging, often tie-die, with flavors such as peach mango paradise and blueberry blast.

There are no excise taxes on e-cigarettes, and many are cheaper than cigarettes. While the cost of cigarettes is close to \$10 a pack, many e-cigarettes and e-hookah are sold for as low as \$5.00.

The level of nicotine and other chemicals in e-cigarettes varies greatly, and one brand may be much higher or lower than another. Disposable e-cigarettes, which are often flavored, can contain roughly the equivalent amount of nicotine as one to two packs of cigarettes.<sup>15</sup>

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