

**Newburyport Board of Health Meeting
December 12, 2019**

Date of Approval: January 16, 2020

Attendees

Dr. Robin Blair, Chairman of the Board
Dr. Sam Merabi, Board Member
Dr. Rob Slocum, Board Member
Frank Giacalone, Health Director
Patricia McAlarney, Note Taker

Call to Order: Dr. Blair called the meeting called to order at 7:07 p.m.

Approval of Minutes: Motion to approve the minutes of the Board of Health meeting of November 14, 2019 was made by Dr. Merabi; seconded by Dr. Blair . Votes to approve: 3 ; votes opposed - none. Minutes of the November 14, 2019 meeting were approved as submitted.

Tobacco Regulations – Director Giacalone

Director Giacalone explained to the Board that Newburyport's Tobacco Regulation is now less restrictive than Massachusetts General Law. Effective January 1, 2019, Mass. General Law required persons to be age 21 to purchase tobacco and grandfathered persons who had attained age 18 as of December 30, 2019 to allow them to also purchase tobacco. Since Newburyport's current regulation allows all persons age 19 to purchase tobacco, it is recommended that Newburyport change their regulation to require all persons to be age 21 and to grandfather those persons who had attained age **19** on or before December 30, 2019. A copy of the proposed changes to the Regulations was provided to Board Members and is attached to the minutes of this meeting.

A motion was made by Dr. Merabi and seconded by Dr. Blair to change the Board of Health Regulation Chapter 4.2.024 Tobacco Product to read as follows:

*No person shall sell tobacco products or permit tobacco products to be sold to a person under the age of ~~19~~ **21** or give tobacco products to a person under the age of ~~19~~ **21**.
However, pursuant to Sections 19 and 22 of Massachusetts Chapter 157 of the Acts of 2018, the prohibition on sales of tobacco products to persons under the age of 21 shall not prohibit such sales to persons who attained the age of 19 before December 31, 2018.*

Votes to approve: 2 ; votes opposed – none. The motion passed as presented.

Crow Lane Landfill: Director Giacalone explained that a letter has been received by the City from the Department of Environmental Protection that states that as part of the planned closure of the city's landfill, the air monitoring system that is located on an abutter's property is due to be discontinued. Director Giacalone noted that the readings of the air monitoring system have consistently been within acceptable limits. He further explained that the Mayor has been very involved in the landfill closure process and is working with the Department of Environmental Protection to have the process completed.

Solid Waste and Recycling – Director Giacalone provided the following update that was prepared by Molly Ettenborough, Energy & Sustainability Coordinator:

The city council has not brought the waste proposal out of the public safety committee so that means it will die there for this year. Meaning, we will have to bring it back to them in the new year. I am working on some thoughts on how to bring it back to them with some changes based on the feedback we have heard thus far from folks. I will run it by the Board of Health at the January meeting before submitting it the council.

A request was made by Dr. Merabi that prior to the next meeting Molly send a report outlining the cost differences between the City's prior contract and the projected costs associated with the new contract, as well as a summary of all local ordinances and regulations or policies related to solid waste that are currently in existence. It was further requested that any data provided by Waste Zero also include an explanation that supports any claims of reduction to waste tonnage or cost reduction so that the Board may calculate whether the proposed waste plan may be expected to provide similar savings. Dr. Merabi explained that reports of savings associated with Waste Zero programs only result in a 22 – 25% reduction in waste tonnage.

Public Health Nurse Update – Director Giacalone

- The Public Health Nurse will be going on maternity leave in March. The Department does not anticipate any issues associated with her absence but can reach out to public nurses from other municipalities, if guidance or assistance is needed.
- The Department still has doses of regular and high dose flu vaccine that can be administered in the Health Department by appointment.
- The Mothers' Visiting Nurse program has spent all the funds from the original grant. An application for a new grant in the amount of \$100,000 has been submitted to cover costs of the program; however, each participating community will need to provide \$2000 to cover the cost of an administrator that will compile all of the data from the program. If the grant is approved, three additional communities will be added to the program. Director Giacalone noted that out of the five communities currently participating, Newburyport accounts for approximately 25% of all Mother/baby visits. He has reached out to Anna Jaques Hospital to ask them to contribute to the cost of the program since the referrals for the program come mostly from patients of Anna Jaques.

Service Animals in Food Establishments

Director Giacalone explained that the breweries in town have been encouraging dogs to be brought to the establishments; especially in the outdoor seating areas. The Board was asked whether they feel that they want to consider offering a variance option that would allow establishments to allow dogs in the outdoor areas of restaurants. He explained that the 2013 Food Code allows only service animals in food establishments. It is becoming more common for communities to allow dogs in the outdoor sections of restaurants. Samples of Board of Health Regulations from Salem and Portsmouth, NH which allow dogs in (the outdoor areas of) food establishments was sent previously to Board Members. Director Giacalone informed the Board that he had discussed this issue with the state Department of Public Health who informed him that variances may be enacted by communities to allow pet dogs in the outdoor area of the food establishment (but not inside the establishment.) The Board discussed the issue and asked that Director Giacalone utilize the Salem, MA variance as an example but excluding #16 which requires the outdoor ground area be sanitized.

Food Establishments – Director Giacalone

- Vera Ristorante – This is a new establishment at the prior West Row location at Market Square. The restaurant will feature Neapolitan wood-fired pizza utilizing a special oven that can cook a pizza in 90 seconds.
- Tuscan Kitchen is still predicted to come into the waterfront location of the previous Black Cow.
- Pomodori has now opened for business at the Route One rotary (at the previous Courtyard location.)

Animal Control:

The new Animal Control Officer, Kayla Provencher, is doing a great job. Most recently she handled a difficult case involving the arrest of residents from a Newburyport home that also required that she board the resident's cat and arrange for relocation of a guinea pig.

Other Matters:

Jane Rascal, resident of 51 Woodland Street in Newburyport, attended the meeting to confirm that the Board is not interested in establishing an Integrated Pest Management Working group as she had previously suggested. Ms. Rascal provided the Board with documents and maps that described the risk Categories and locations in Northeast Massachusetts where mosquitoes that had tested positive for Eastern Equine Encephalitis had been identified. She explained that her concern was with the decision the spraying for mosquitoes in Amesbury in late September. A single EEE infected mosquito was identified in the town forest. At the time, Amesbury was categorized as a moderate risk for EEE; and Ms. Rascal feels that, based on the protocol outlined by the Department of Public Health the finding of the EEE infected mosquito should not have resulted in ground spraying of adulticide across the entire town. Ms. Rascal feels that this was an exaggerated response with only a six hour notice prior to the ground spraying. She stated that a locally focused/targeted pesticide spray should have been conducted instead. She further stated that Massachusetts anticipates 9000 cases of cancer this year and that the threat of cancer from pesticides exceeds the concern warranted by only 12 cases of EEE statewide. She wants the Board to consider the potential harm that can be caused by exposure to the pesticides.

Dr. Merabi explained that any decision to change the current practice and protocol of pesticide application (or non-application) would require compelling data showing that the current protocol and practices (as set by the Massachusetts Department of Public Health, Northeast Massachusetts Mosquito Control and local municipalities/Boards of Health) requires reconsideration and possible change. After discussion, the Board determined that they do not feel that there is compelling evidence that the current practices and procedures need to be reconsidered or changed.

MOTION: Motion to adjourn made by Dr. Blair; seconded by Dr. Slocum. Votes in favor - 3; Votes to oppose - 0. Meeting adjourned at 8:06 pm.

CHAPTER 4 TOBACCO CONTROL

SECTION 1 RESTRICTING THE SALE OF TOBACCO PRODUCTS: 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 (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;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were aged less than eighteen (18) years, 14.1% usually obtained their own cigarettes by buying them in a store (i.e., convenience store, supermarket, or discount store) or gas station (CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.);

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes (CDC Office of Smoking and Health, National *Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in “Trends in Tobacco Use”, ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.);

Reserved for local statistics:

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (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/);

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem;

Whereas many non-cigarette tobacco products, such as 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 (CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.);

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history (Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.)

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% (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;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>;

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit and high prices deter youth from starting. Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco (¹ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.) and (Chaloupka, F. J. & Lippman, P. D., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>);

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) (TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>;

Whereas the sale of tobacco products are 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;

Now, therefore it is the intention of the Newburyport Board of Health to regulate the sale of tobacco products.

SECTION 2 DEFINITIONS

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

4.2.001 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.

4.2.002 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.

4.2.003 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.

4.2.004 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.

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

4.2.006 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.

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

4.2.008 ELECTRONIC CIGARETTE: Any electronic device composed of a mouthpiece, heating element, battery and /or electronic circuits that provides vapor of liquids, regardless of nicotine content, or relies on vaporization of any solid or liquid substance, regardless of nicotine content. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

4.2.009 EDUCATIONAL INSTITUTION: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

4.2.010 EMPLOYEE: Any individual who performs services for an employer.

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

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

4.2.013 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.

4.2.014 HEALTH CARE INSTITUTION: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

4.2.015 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.

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

4.2.017 PERMIT HOLDER: Any person engaged in the sale or distribution of tobacco products directly to consumers 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.

4.2.018 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.

4.2.019 RETAIL TOBACCO STORE: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 19 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Newburyport Board of Health.

4.2.020 SELF SERVICE DISPLAY: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

4.2.021 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.

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

4.2.023 SMOKING BAR: An establishment that primarily is engaged in the retail sale of

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

4.2.024 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.

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

SECTION 3 TOBACCO PRODUCT SALES

No person shall sell tobacco products or permit tobacco products to be sold to a person under the age of ~~19~~ **21** or give tobacco products to a person under the age of ~~19~~ **21**. **However, pursuant to Sections 19 and 22 of Massachusetts Chapter 157 of the Acts of 2018, the prohibition on sales of tobacco products to persons under the age of 21 shall not prohibit such sales to persons who attained the age of 19 before December 31, 2018.**

4.3.002 REQUIRED SIGNAGE

4.3.002(1) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Newburyport Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.

4.3.002(2) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Newburyport Board of Health that discloses current referral information about smoking cessation.

4.3.002(3) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post a sign stating that “The sale of tobacco products to persons under 19 years of age is prohibited.” The notice shall be no smaller than 8.5” by 11” and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. 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.

4.3.003 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 confirming that the purchaser is 19 years old or older. Verification for any person, regardless of age is highly recommended.

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

SECTION 4 TOBACCO PRODUCT SALES PERMIT

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

4.4.002 As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Newburyport Board of Health regulations. Each applicant is required to sign a statement declaring that the applicant has read Chapter 4 “Tobacco Control” regulations 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.

4.4.003 Each year, the applicant who plans to continue to sell tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Newburyport Tobacco Product Sales Permit can be re-issued.

4.4.004 The fee for a Tobacco Product Sales Permit shall be in accordance with the most current Board of Health fee schedule. All such permits shall be renewed annually by June 30th of every year.

4.4.005 A separate permit is required for each location where a retail establishment is selling tobacco products.

4.4.006 Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

4.4.007 No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement that he/she has read the regulation and applicable state and federal laws, a copy of which will be placed on file in the office of the employer

4.4.008 A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

4.4.009 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.

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

4.4.011 A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions. Permit renewals will be denied if the permit holder fails to renew his/her permit within 30 days after June 30th of each year.

4.4.012 Limiting Number of Tobacco Product Sales Permits Issued in the City of Newburyport. As of April 1, 2014, the Newburyport Board of Health shall not issue a Tobacco Product Sales Permit to a first-time permit applicant with a new business. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his/her permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 30 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and failure to meet this deadline will result in the Buyer being treated as a first-time permit applicant.

4.4.013 A Tobacco Product Sales Permit shall not be issued to any person 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 retail location. This section shall not apply to any person who currently operates a retail location within 500 feet of a public or private elementary or secondary school as of the effective date of this section.

SECTION 5 CIGAR SALES REGULATED:

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

4.5.002 This Section shall not apply to:

- (a) The sale or distribution of any cigar having a retail price of more than two dollars and fifty cents (\$2.50).
- (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 Newburyport.

4.5.003 The Newburyport 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.

SECTION 6 THE SALE OF BLUNT WRAPS

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

SECTION 7 SALE OF FLAVORED TOBACCO PRODUCTS RESTRICTED

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

SECTION 8 FREE DISTRIBUTION AND COUPON REDEMPTION

No person shall distribute, or cause to be distributed, any free samples of tobacco products. No means, instruments or devices that allow for the redemption of tobacco products for free or at a reduced price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permittee.

SECTION 9 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.

SECTION 10 SELF SERVICE DISPLAYS

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

4.10.001(a) EXEMPTION: Self service displays that are located in facilities where the retailer ensures that no person younger than nineteen (19) years of age is present, or permitted to enter, at any time.

SECTION 11 TOBACCO VENDING MACHINES

4.11.001 All tobacco product vending machines are prohibited.

4.11.001(a) EXEMPTION: Vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than nineteen (19) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to employees.

SECTION 12 NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINES

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

SECTION 13 PROHIBITION OF TOBACCO PRODUCT SALES PERMITS HELD BY HEALTH CARE INSTITUTIONS:

No health care institution located in Newburyport shall sell or cause to be sold tobacco products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

SECTION 14 PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY EDUCATIONAL INSTITUTIONS:

No educational institution located in Newburyport shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

SECTION 15 VIOLATIONS/ENFORCEMENT/PENALTIES

4.15.001 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 products. The violator shall receive:

- a) In the case of a first violation, a fine of two hundred (200) dollars, mandatory employee tobacco education and required to appear before the Board of Health.
- b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred and fifty (250) dollars and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- c) In the case of three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days and the potential for revocation of tobacco permit.

4.15.002 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.

4.15.003 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 have their Tobacco Product Sales Permit revoked.

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

4.15.005 Non-Criminal Disposition: Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.

4.15.006 Enforcement: Enforcement of this regulation shall be by the Newburyport 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 Newburyport Board of Health or its designated agent(s) and the Board shall investigate.

SECTION 16 OTHER APPLICABLE LAWS

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

SECTION 17 PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

4.17.001 The Board of Health adopts the Massachusetts Smoke-Free Workplace Law (Massachusetts General Law Chapter 270, Sections 21 and 22) by reference and any future revisions as a local regulation.

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

- a) retail tobacco stores
- b) smoking bars
- c) outdoor spaces of restaurants, bars, taverns and any other outdoor space where food and/or alcoholic beverages, and/or non-alcoholic beverages are sold to the public and served to the public, or otherwise consumed or carried by the public.

17.003 The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts General Laws Chapter 270, Section 22 and Section 16.002 of this regulation.

SECTION 18 THROUGH 22

Reserved for future regulations, amendments, etc.

SECTION 23 SEVERABILITY

4.23.001 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.

Effective Date:

This regulation shall take effect on January 1, 2018.

Section 3 pertaining to the minimum legal sales age of 21 shall take effect on December 31, 2019.