

CHAPTER 4 TOBACCO CONTROL

SECTION 1 RESTRICTING THE SALE OF TOBACCO PRODUCTS: 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;¹

Whereas, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence;⁴

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;⁵

Whereas, the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;⁶

Whereas, cigars and cigarillos, can be sold in a single “dose,” and enjoy a relatively low tax as compared to cigarettes;⁷

Whereas, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;⁸

¹ U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, (2010), http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

³ U.S. Dep’t of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ *Id.* at 13 (Executive Summary).

⁵ *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).

⁶ Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data/>).

⁷ CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>).

⁸ U.S. Dep’t of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) (www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

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;⁹

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;¹⁰

Whereas, ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021;¹¹

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;¹²

Whereas, the New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students,¹³ which is incompatible with the sale of tobacco and nicotine products;

Whereas, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;¹⁴

Whereas, the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;¹⁵

⁹ Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Dep’t of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012) www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁰ See fn. 3 at p. 85.

¹¹ MA YRBS 2017

¹² 310 CMR 30.136

¹³ New England Commission on Higher Education, *Standards for Accreditation* at 24 (2021), <https://www.neche.org/resources/standards-for-accreditation>.

¹⁴ Ying-Chih Chuang et al., *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) J. Epidemiol Cmty Health 568 (2005) (doi: 10.1136/jech.2004.029041); Shelley D. Golden et al., *County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012*, 17 (101005) Prev. Med. Rep. (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Eric C. Leas et al., *Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States*, 179(3) JAMA Intern Med., 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); JG Lee et al., *Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis*. Tobacco Control. Published Online First: 03 September 2021; LR Reitzel et al., *The effect of tobacco outlet density and proximity on smoking cessation*. American Journal of Public Health. 2011, 101(2):315-320; L Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools?* Preventive Medicine. 2008, 47(2): 210-4.

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;¹⁶

Whereas, policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;¹⁷

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.”¹⁸

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, 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, menthol, mint, wintergreen herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely

¹⁵ L J Finan et al., *Tobacco Outlet Density and Adolescents' Cigarette Smoking: A Meta-Analysis*, 28(1) *Tob Control*. 27 (2019) (doi: 10.1136/tobaccocontrol-2017-054065); Abdel Magid HS et al., *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*, 66(4) *J. Adolescent Health* 423 (2020) (doi: 10.1016/j.jadohealth.2019.09.004).

¹⁶ Siahpush M. et al., *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*, 124(9) *Pub. Health* 525 (2010) (doi: 10.1016/j.puhe.2010.04.010); Lee JG, et al., *Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study*, 71(5) *J. Epidemiol Cmtty Health* 487 (2017) (doi: 10.1136/jech-2016-208475); D.O. Fakunle et al., *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*, *Ethn Health*. 1 (2019) (doi: 10.1080/13557858.2019.1620178).

¹⁷ Ribisl KM, et al., *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*, 19(2) *Nicotine Tobacco Res.* 239 (2017) (doi: 10.1093/ntn/ntw185); HG, Henry et al., *Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019)*, 110 (4) *Am J. Pub. Health* 547 (2020) (doi: 10.2105/AJPH.2019.305512); A.E. Myers et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 *Prev. Med.* 67(2015) (doi: 10.1016/j.ypmed.2015.01.025).

¹⁸ *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

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.

CHILD-RESISTENT PACKAGING: Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 et seq., pursuant to 15 U.S.C. 1471 through 1476.

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.

COUPON: Any card, paper, note, form, statement, ticket or other communication 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.

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

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.

ELECTRONIC NICOTINE DELIVERY SYSTEM: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that "electronic nicotine delivery system" shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that "electronic nicotine delivery system" shall also include any component, part, or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that "electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved 105 CMR: DEPARTMENT OF PUBLIC HEALTH purpose.

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.

LIQUID NICOTINE CONTAINER: A package: (1) from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer; and (2) that is used to hold soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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.

MANUFACTURER DOCUMENTATION: A written document from a manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products.

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 sale permit pursuant to these regulations, or his or her business agent.

4.2.018 PERSON: Any individual, firm, fiduciary, partnership, corporation, trust or association, however formed, or a club, trustee, agency or receiver.

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. An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that does not sell food, beverages or alcohol, that does not have a lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Newburyport Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

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

4.2.021 SMOKE CONSTITUENT: Any chemical or chemical compound in mainstream or side stream 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.

TOBACCO PRODUCT FLAVOR ENHANCER: Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product.

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 or provide a tobacco product to any individual younger than 21 years of age, as verified by said person's valid government-issued photographic identification.

4.3.002 REQUIRED SIGNAGE

All retail establishments, including smoking bars and retail tobacco stores, shall conspicuously post signage, in the form developed and made available by the Department. Such signage shall include: (1) a copy of M.G.L. c. 270, §§ 6 and 6A; (2) referral information for smoking cessation resources; (3) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years old is prohibited; (4) health warnings associated with using electronic nicotine delivery systems; and (5) except in the case of smoking bars, notice to consumers that the sale of flavored tobacco products are prohibited at all times. Such signage shall be posted conspicuously 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 feet or greater than nine feet from the floor. (B) In addition to the signage required by 105 CMR 665.015(A), smoking bars and retail tobacco stores shall post signage, in the form developed and made available by the Department, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

4.3.003 IDENTIFICATION: Each person selling or providing tobacco products shall verify the age of the purchaser by means of a valid government-issued 105 CMR: DEPARTMENT OF PUBLIC HEALTH photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age or older, as verified by said person's proof of identification. In addition, an employee of a retail tobacco store must inspect the individual's valid government-issued photographic identification and determine the individual's age prior to said individual entering a retail tobacco store. An individual shall

not enter a tobacco retail store unless the employee has verified that the individual is 21 years of age or older, as verified by said person's proof of identification.

- 4.3.004** All retail sales of tobacco products must be face-to-face between the seller and the buyer 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 PROHIBITED

No person shall sell, distribute, cause to be sold or distributed, or offer for sale to a consumer a flavored tobacco product or tobacco product flavor enhancer.

Retailer must obtain manufacturer documentation certifying that all products sold or distributed by the retailer do not meet that definition of a flavored tobacco product flavor enhancer (105 CMR 665.010(E)).

SECTION 8 – NICOTINE CONTENT IN ELECTRONIC NICOTINE DELIVERY SYSTEMS

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores or smoking bars.

Retailers must obtain manufacturer documentation verifying that all electronic nicotine delivery products sold or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

SECTION 8 FREE DISTRIBUTION AND COUPON REDEMPTION

No person shall 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 without charge or for less than the listed or non-discounted price. No retail establishment that is not a retail tobacco store or smoking bar, or any other establishment shall distribute or cause to be distributed a free sample of a tobacco product.

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.

The sale of tobacco products, as defined in 105 CMR 665.000, in any form other than an original factory wrapped package is prohibited, including the repackaging or dispensing of any tobacco product for retail sale.

No person shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, Massachusetts Hazardous Waste Regulations.

All permit holders 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.*”

No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

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.

SECTION 11 TOBACCO VENDING MACHINES

4.11.001 All tobacco product vending machines are prohibited.

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

It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate G.L. c. 270, §§6, 28, 29 and 105 CMR 665, the following penalties apply:

- a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 665.040(D).
- b. In the Case of a second Violation within Thirty-six (36) months of the date of current violation, a fine of two thousand dollars (\$2,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Sales Permit shall be suspended for (30) consecutive business days.
 1. For violations of all sections specific to the City of Newburyport, the violator shall receive:
 - a. In the case of a first violation, a fine of two hundred dollars (\$200.00).

- 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 dollars (\$250.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- c. In the case of three or more violations within a thirty-six-month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- d. List of State Law Fines and Local Regulation Fines:

Policies Subject to State Law Fines
(G.L. c. 270, §§6, 28, 29 (Section S. 1))

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §28)
- Penalties for sales to a person under the age of 21 of Tobacco/Vape products (105 CMR 665.045)
- Mandated Local Tobacco Sales Permit suspension for a first violation for sales to a person under the age of 21 of Tobacco/Vape products (105 CMR 665.040(d))
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §29)
- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a person under the age of 21 into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))
- Other state policies

Policies Subject to Local Regulation Fines
(Section S.2)

- Prohibition of the Sale of Blunt Wraps
- Ban on Smoking Bars
- Cigar Sales Regulated, including minimum sales price regulations
- Tobacco Product Sales in Health Care Institutions
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Display of Mass. Department of Revenue license(s)
- No Local Tobacco Sales Permit
- Permit caps
- Other local policies

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 Smoking Bars are prohibited in the City of Newburyport. In addition, pursuant to Massachusetts General Laws Chapter 270, Section 22 (j), smoking is also hereby prohibited in the following locations:

- a) retail tobacco stores
- b) 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 electronic delivery systems is prohibited wherever smoking is prohibited per Massachusetts General Laws Chapter 270, Section 22 and 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 _____.