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CITY OF MARLBOROUGH BOARD OF HEALTH POSTING

2015 FEB 26 P 3:03

Meeting Name: Marlborough Board of Health

Date: Tuesday, March 3, 2015

Time: 6:30 PM

Location: 140 Main Street, City Hall, Council Committee Room, First Floor
Marlborough, MA 01752

Agenda Items to be addressed:

Call to Order

Administrative:

1. Review February 17, 2015 Board of Health Minutes

New Business:

- 2A. Fee Schedule Review
- 2B. Tobacco Regulation Hearing
- 2C. Prevention Wellness Trust Fund / Inter-Municipal Agreement
- 2D. Health Inspector Report
- 2E. Public Health Nurse Report

Old Business

ADJOURNMENT

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.



City of Marlborough
Department of Health
140 Main Street, Lower Level
Marlborough, MA 01752
(508) 460-3751 FAX (508) 460-3625

Regular meeting of the Board of Health held on Tuesday, February 17, 2015. Called to order by James Griffin, Chairman at 6:30 PM in the Council Committee Room, City Hall, 1st floor.

PRESENT: James Griffin, Chairman (JG); John Curran, M.D., Vice Chair (JC); Robin Williams, Member (RW); Steven Ward Interim Public Health Director; Tina Nolin, Senior Clerk.

Administrative:

- 1: Minutes Review: The board reviewed the minutes of the February 3, 2015 meeting.**
RW made a motion to approve the minutes of the February 3 meeting and place on file. JC seconded. Motion carried 3-0.

New Business:

2A: Hearing: Sully's First Edition Pub

Mr. Sullivan of Sully's First Edition Pub and his Food Consultant, Eric Nusbaum appeared before the Board to show cause as to why the Board of Health should not suspend or revoke Mr. Sullivan's Permit to Operate a Food Establishment for serious and repeated violations and failure to comply with the requirements of Massachusetts State Sanitary Code, 105 CMR 590.000 and the 1999 Federal Food Code.

Mr. Ward presented the history of Sully's First Edition Pub violations and failure to correct, but noted that in the past month there had been progress including installation of a 3-bay sink, Mr. Sullivan had a signed contract with a consultant to work with him on the outstanding issues, and progress on addressing the walk-in services as well as the menu. SW mentioned the department was pleased with the progress seen albeit somewhat delayed.

Food Inspector, Maureen Lee presented her latest inspection notes and noted that while many violations had been corrected there were still issues remaining related to food expiration dates and other managerial function procedures.

Mr. Nusbaum then presented the status regarding violations outlined in the BOH January 6 Decision Order Letter.

- Walk-in: waiting for final bids to come in regarding epoxy vs stainless steel coverings, NSF compliant door; also replacing lighting.
- Limiting menu is underway that takes into account limitations on kitchen
- Storage room and bathrooms also on the radar for addressing by March deadlines
- Issues with trash complain also addressed
- Mr. Nusbaum will be providing a training for this coming Friday, February 20th, that will cover general food safe practices, personal hygiene issues, batch dredging practices, standard cleaning schedule so they know on a weekly basis that things will be cleaned. In addition, upon the Board's request active managerial control standards will be covered. Mr. Sullivan is scheduled for a ServSafe certification class on Wednesday, February 25, 2015 and should have his certificate in 2 weeks' time.

RW asked if staff would also be trained. Mr. Nusbaum said yes – all kitchen staff, some bar staff and serving staff. Board presented with outline of curriculum.

JG asked if there would be any measurable account of the training – Nusbaum said there was not traditionally, but could be. Further discussion on general ServSafe and training practices were covered.

JG asked Mr. Nusbaum to submit names of all employees as well as those who attended the training; Mr. Nusbaum agreed.

Mr. Ward made recommendation to the Board to continue suspension hearing until the April 7, 2015 Board Meeting when all dates for compliance will have passed and also allow time for the details related to the Walk-in and capital plan for future upgrades could be fleshed out. This is based on current albeit delayed progress and continued progress.

JC motioned to accept recommendation, RW seconded the motion. Motion carried 3-0.

2B. Board Appointments

- 1) John Garside: Assistant Sanitarian** – Introduced by Steve Ward, gave brief background on himself and experience, including 10 years' experience in public health, 12 years in construction development company. Excited to be back in public health.

RW motioned that the Board of Health appoint John Garside as Assistant Sanitarian in the Board of Health Department, effective Wednesday, February 25, 2015 and upon his successful completion of the city's employment screening process.

JG seconded. Motion carried 3-0.

- 2) **Cathleen Liberty: Administrator/Sanitarian** – Steve Ward introduced Cathleen Liberty, who gave brief background on herself and experience including a Master’s Degree in Public Health, Health Agent for Town of Webster and being ready to bring her experience to Marlborough.

RW motioned that the Board of Health appoint Cathleen Liberty as the Sanitarian/Administrator of the Board of Health Department, effective Monday, March 2, 2015, with full authority, oversight and responsibility regarding employee supervision, department operations, policy implementation and other tasks as may be assigned by the Board. JC seconded. Motion carried 3-0.

2C. Fee Schedule

Steve Ward recapped current fee schedule which needs to be brought up to date with surrounding towns, additional and neglected fees noted and final renewal dates attached to it.

Mr. Ward gave rationale for adding a surcharge fee and a sample of the notice that goes out with the letter to inform establishments what they are getting the surcharge. The surcharge would cover the costs of having an inspector out to an establishment for repeated inspections when violations are present. Mr. Ward said he would continue to tweak the schedule a bit and offer recommendations that take into account fee amounts collected from other towns in a survey by the Mayor’s office. Board was asked to consider it for adoption at the March or April Board meeting.

There was consensus among Board Members to revisit the fee schedule with an eye toward adoption at a Board meeting in the next few months.

2D. Tobacco Regulation and Testimony Review

Brief discussion on the previous meetings public hearing and overall feelings for how it went and what was the overall takeaways from the various speakers for and against the regulations.

JG asked for time with DJ Wilson or Cheryl Sbarra to go over legal issues as they relate to the regulations. Agreed this would happen at next Board meeting.

SW brought up the Mayor’s interest in not having a cap on the number of tobacco Licenses the city could approve. Board was in consensus that the language related to capping the number of tobacco licenses in the city could be removed from the regulations.

JC asked about setting up compliance checks with Bianca Pierre. Steve Ward agree she could be at the March Meeting to go over our needs. Mr. Ward also discussed the teaching and training the board would need to do to help retailers with compliance.

Board was at consensus to vote on the regulations at the next meeting after talking with DJ Wilson and/or Cheryl Sbarra and Bianca Pierre with implementation in July, 2015.

2E. Sam Wong and Alex DePaolo update

Dr. Wong and Ms. DePaola gave updates on the Prevention & Wellness Trust Fund project and MetroWest Moves project, as they move into the actual implementation phases. They discussed the grants provision for a community health worker that would be hired for each community (and paid through grant funds). Noting Marlborough Health Departments Transition situation that suggested we share the community health worker from Hudson for the short term until we were a little more stable and ready to "hire" our own. The community health worker would be the community interface person who would follow up with referrals and help qualified residents get the help they needed as relates to the parameters of the grants.

Both Ms. DePaola and Dr. Wong both stressed the state and national attention that the work from these grants will be getting as they are a model for future state and national programs.

Adjournment

Next BOH meeting will be held on Tuesday, March 3, 2015 at 6:30 pm.

RW motioned to adjourn; seconded by JC (Motion carried 3-0). Meeting adjourned at 9:03 PM.

Respectfully submitted,

James Griffin, Chairman



CITY OF MARLBOROUGH

BOARD OF HEALTH

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James Griffin, Chairman
 John Curran, MD, Member
 Robin Williams, Member
 Tel (508) 460-3751

In accordance with the authority granted by the General Laws of the Commonwealth of Massachusetts, Chapter 111, Section 31 and provisions of the State Sanitary and Environmental Codes, the Board of Health of the City of Marlborough hereby establishes the following regulation pertaining to permit requirements and fees relating thereto:

CITY OF MARLBOROUGH FEE SCHEDULE FOR LICENSES AND PERMITS

FOOD PERMITS	CURRENT FEE	RECOMMENDED FEE	EXPIRATION DATE
Food Service Establishments			
Food Service (Seats 0 - 49 seats)	\$100	\$200	December 31 st *
Food Service (Seats 50 & Over)	\$175	\$300	December 31 st *
Temporary (up to 14 days)	\$25	\$50	December 31 st *
Seasonal/Concessions (< 14 days)	\$75	\$75	December 31 st *
Non-Profit	delete	delete	
Schools	N/C	N/C	December 31 st *
Schools (Outside)	delete	delete	
Theater/Concession	delete	delete	
Churches	N/C	N/C	December 31 st *
Bakeries (under 3,000 Sq. ft.)	\$100	\$150	December 31 st *
Bakeries (over 3,000 Sq. ft.)	\$150	\$200	December 31 st *
Residential Kitchen	\$75	\$75	December 31 st *
Catering Establishment (Annual)	\$100	\$125	December 31 st *
Mobile Food Canteen (Per Truck)	\$50	\$75	December 31 st *
Milk License (Consider removing)	delete	delete	
Frozen Dessert Manufacturing	\$25	\$25	December 31 st *
Retail Food Establishments			
Under 1,500 sq. ft.	\$100	\$125	December 31 st *
1500-4000 sq. ft.	\$125	\$175	December 31 st *
4000 – 5000 Sq. ft.	\$ 200	\$275	December 31 st *
			*(Consider Nov. 30 th)
Review of Plans New/Renovations			
New establishment	--	\$150	
Renovation/Remodel	--	\$75	
Variance	--	delete	
Permitted Establishments			
Renewal Late Fee (<i>per day fee – 14 day assessment followed by administrative hearing</i>)	--	\$5	
Permitted Establishment			
Surcharge Fee (<i>Fee assessed for each additional inspection as a result of non-compliance</i>)	--	\$75	



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MISC. PERMIT	CURRENT FEE	RECOMMENDED FEE	EXPIRATION DATE
Onsite Wastewater			
Perc. Test/Deep Hole (Per Lot)	\$100	\$200	
Disposal Works Installers	\$50/Yr.	\$100	Consider May 31 st
Install New Septic System	\$150	\$250	
Repair or Replace	\$100	\$150	
Septage Hauler (Per Truck)	\$100	\$125	Consider May 31 st
Wells			
Wells	--	\$100	
Plan Review	\$100	\$100	
Swimming Pools & Whirlpools			
Semi-Public (<i>annual</i>)	\$100	\$200	December 31 st
Semi-Public (<i>seasonal</i>)	\$100	\$150	May 31 st
Special Purpose/Jacuzzi	\$75	\$125	December 31 st
Wading Pool (<i>seasonal</i>)	\$75	\$100	May 31 st
Review of Plans New/Repairs	\$50	\$75	
Tanning Establishments			
Permit	\$100	\$125	May 31 st
Plan Review	N/A	\$100	
Miscellaneous			
Abrasive Blasting (Annual Registration)	\$25	\$50	May 31 st (Assigned)
Abrasive Blasting (Per day fee)	\$75	\$75	
Bed and Breakfast	---	delete	
Burial Permit	\$10	delete	City Clerk
Day/Recreational Camp	\$100	\$150	Upon Permit Application
Funeral Directors	\$25	\$50	April 30 th
Lodging House	\$25	\$100	December 31 st
Motel/Mobile Home	\$50	\$100	December 31 st
Rubbish Contractors (Per Truck)	\$100	\$100	December 31 st
Tobacco Permit	\$100	\$150	December 31 st

Effective Date:

This fee schedule shall take effect on _____.

Board of Health Marlborough, MA

Publication Date: _____

1. _____
 James Griffin, Chairman

2. _____
 John Curren, MD, Member

3. _____
 Robin Williams, Member

Regulation of the Marlborough 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 throat¹;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

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 cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development⁵;

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

Whereas research has shown that raising the minimum legal drinking age to 21 has reduced alcohol consumption among youth and protected drinkers from long-term negative outcomes in adulthood, including alcohol and other drug dependence⁶;

More than 80 percent of all adult smokers begin smoking before the age of 18; and more than 90 percent do so before leaving their teens⁷

¹ 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.

² 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>.

³ 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.

⁴ 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/.

⁵ 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>.

⁶ DeJong W, Blanchette J 2013. “Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States.” *J. Stud. Alcohol Drugs, Supplement 17*, 108 – 115, 2014.

⁷ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health.

With Cap language – highlighted Pp. 7-8

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 youth⁸;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010⁹; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;¹⁰

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹¹ largely because these flavored products were marketed to youth and young adults,¹² and younger smokers were more likely to have tried these products than older smokers;¹³

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹⁴ 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;¹⁵

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;¹⁶

⁸ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁹ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

¹⁰ SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health*.

¹¹ 21 U.S.C. § 387g.

¹² 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.

¹³ 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.

¹⁴ 21 U.S.C. § 387g

¹⁵ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, 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.

¹⁶ 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.

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;¹⁷

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸

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 one¹⁹;

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 went from 11.8% in 2003 to 14.3% in 2011²⁰;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported²¹;

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 history²²;

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%²³;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes²⁴;

¹⁷ Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

¹⁸ Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; 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. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁹ 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>.

²⁰ CDC (2011) *Youth Risk Behavior, Surveillance Summaries (MMWR)* 2012: 87 (No. SS-61). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries (MMWR)* 2004: 53, 54 (No. SS-02)).

²¹ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

²² 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.

²³ 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 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 quit²⁵ and high prices deter youth from starting.²⁶ 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;

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)²⁷;

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”²⁸.

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

B. Authority:

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

²⁴ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

²⁵ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

²⁶ Chaloupka, F. J. & Liccardo Pacula, R., 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/>.

²⁷ TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

²⁸ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

C. Definitions:

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

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.

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.

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.

With Cap language – highlighted Pp. 7-8

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.

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.

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 Marlborough Board of Health.

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

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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 Marlborough is twenty-one (21).

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 Marlborough 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.
- 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 Marlborough 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, as defined herein, 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 21 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 21 years old or older. Verification is required for any person under the age of 27.

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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 of Marlborough without first obtaining a Tobacco Product Sales Permit issued annually by the Marlborough Board of Health. Only owners of establishments with a permanent, non-mobile location in Marlborough are eligible to apply for a permit and sell tobacco products at the specified location in Marlborough.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Marlborough 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 Marlborough 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. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. 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.

9. 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.

10. 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.

11. Maximum Number of Tobacco Product Sales Permits.

At any given time, there shall be no more than thirty-eight (38) Tobacco Product Sales Permits issued in Marlborough. 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

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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 sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein. 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 or are returned to the Board of Health.

12. 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. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may 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 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 Marlborough.
4. The Marlborough 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 retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Marlborough.

I. Free Distribution and Coupon Redemption:

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

J. Out-of-Package Sales:

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.

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.

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 Marlborough 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 Marlborough 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. 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 one hundred dollars (\$100.00).
 - 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 dollars (\$200.00) 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 (36) 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. In the case of further violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health may 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 Marlborough 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 Marlborough Board of Health shall 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.

Q. 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.

R. Enforcement:

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

S. 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.

T. Effective Date:

This regulation restricting the sale of tobacco products shall supplant existing regulation and take effect on July 1, 2015.

Board of Health
Marlborough, Massachusetts

Publication Date: _____

1. _____
James Griffin, Chairman

2. _____
John Curren, MD, Member

3. _____
Robin Williams, Member

Regulation of the Marlborough 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 throat¹;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

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 cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development⁵;

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

Whereas research has shown that raising the minimum legal drinking age to 21 has reduced alcohol consumption among youth and protected drinkers from long-term negative outcomes in adulthood, including alcohol and other drug dependence⁶;

More than 80 percent of all adult smokers begin smoking before the age of 18; and more than 90 percent do so before leaving their teens⁷

¹ 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.

² 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>.

³ 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.

⁴ 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/.

⁵ 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>.

⁶ DeJong W, Blanchette J 2013. “Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States.” *J. Stud. Alcohol Drugs, Supplement 17*, 108 – 115, 2014.

⁷ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health.

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 youth⁸;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010⁹; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;¹⁰

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹¹ largely because these flavored products were marketed to youth and young adults,¹² and younger smokers were more likely to have tried these products than older smokers;¹³

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹⁴ 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;¹⁵

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;¹⁶

⁸ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁹ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

¹⁰ SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health*.

¹¹ 21 U.S.C. § 387g.

¹² 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.

¹³ 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.

¹⁴ 21 U.S.C. § 387g

¹⁵ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, 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.

¹⁶ 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.

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;¹⁷

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸

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 one¹⁹;

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 went from 11.8% in 2003 to 14.3% in 2011²⁰;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported²¹;

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 history²²;

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%²³;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes²⁴;

¹⁷ Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

¹⁸ Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; 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. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁹ 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>.

²⁰ CDC (2011) *Youth Risk Behavior, Surveillance Summaries (MMWR 2012: 87 (No SS-61))*. Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries (MMWR 2004: 53, 54 (No. SS-02))*.

²¹ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

²² 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.

²³ 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 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 quit²⁵ and high prices deter youth from starting.²⁶ 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;

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)²⁷;

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”²⁸.

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

B. Authority:

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

²⁴ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

²⁵ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

²⁶ Chaloupka, F. J. & Liccardo Pacula, R., 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://dccps.nih.gov/TCRB/monographs/>.

²⁷ TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

²⁸ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

C. Definitions:

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

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.

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.

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.

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.

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 Marlborough Board of Health.

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 Marlborough is twenty-one (21).

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 Marlborough 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.
- 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 Marlborough 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, as defined herein, 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 21 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 21 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 of Marlborough without first obtaining a Tobacco Product Sales Permit issued annually by the Marlborough Board of Health. Only owners of establishments with a permanent, non-mobile location in Marlborough are eligible to apply for a permit and sell tobacco products at the specified location in Marlborough.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Marlborough 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 Marlborough 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. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. 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.

9. 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.

10. 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.

11. 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. Applicants who purchase an existing business that holds a current Tobacco Product

Sales Permit at the time of the sale of said business may 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 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 Marlborough.
4. The Marlborough 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 retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Marlborough.

I. Free Distribution and Coupon Redemption:

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

J. Out-of-Package Sales:

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.

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.

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 Marlborough 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 Marlborough 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. 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 one hundred dollars (\$100.00).
 - 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 dollars (\$200.00) 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 (36) 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. In the case of further violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health may 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 Marlborough 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 Marlborough Board of Health shall 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.

Q. 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.

R. Enforcement:

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

S. 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.

T. Effective Date:

This regulation restricting the sale of tobacco products shall supplant existing regulation and take effect on July 1, 2015.

Board of Health
Marlborough, Massachusetts

Publication Date: _____

1. _____

James Griffin, Chairman

2. _____

John Curren, MD, Member

3. _____

Robin Williams, Member

**CITY OF MARLBOROUGH
REGULATION PROHIBITING SMOKING
IN WORKPLACES and PUBLIC PLACES**

SECTION 1

The purpose of this regulation is to protect the health of the employees and general public in the City of Marlborough.

SECTION 2

This regulation is promulgated under the authority granted to the Marlborough Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

SECTION 3

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

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

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.

Hotels, Motels and B&Bs: Temporary accommodations that are open to the public for rental and are not intended to be a domicile.

Membership association (also known as a private club): A not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

Municipal building: any building owned, leased or operated by the City of Marlborough.

Nursing home: a residential facility licensed pursuant to M.G.L. Ch. 111, Section 71.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

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 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 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Marlborough Board of Health.

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.

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".

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
- (b) Smoking is hereby prohibited in Marlborough in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law”).
- (c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
 - 1. Smoking Bars
 - 2. Retail Tobacco Stores
 - 3. Municipal-owned Parks, Playgrounds, Athletic Fields, Beaches
 - 4. The area within twenty (20) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.
 - 5. Nursing Homes
 - 6. Membership Associations
 - 7. Hotels, Motels, B&B rooms
 - 8. Public Transportation, Bus and Taxi Waiting Areas
 - 9. Outdoor Space where food and/or beverages are served to the public by employees of restaurants, bars and taverns
- (a) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

SECTION 5: ENFORCEMENT

- (1) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
 - a. \$100 for the first violation;
 - b. \$200 for a second violation occurring within two (2) years of the date of the first offense;and

- c. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (2) Each calendar day on which a violation occurs shall be considered a separate offense.
- (3) This regulation shall be enforced by the Board of Health and its designees.
- (4) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- (5) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- (6) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- (7) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 6: SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION 8: EFFECTIVE DATE

T. Effective Date:

This regulation prohibiting smoking in workplaces and public places shall supplant existing regulations and take effect on July 1, 2015.

Board of Health
Marlborough, Massachusetts

Publication Date: _____

1. _____
James Griffin, Chairman

2. _____
John Curren, MD, Member

3. _____
Robin Williams, Member

**Inter-Municipal Agreement
MetroWest Prevention & Wellness Partnership
Regional Community Health Worker**

THIS AGREEMENT dated as of March 15, 2015 (the "Agreement") is entered into by and between the Towns of Hudson and Northborough, and the City of Marlborough (the "Municipalities").

WHEREAS, M.G.L. c. 40, § 4A, as amended, authorizes the chief executive officer of a city or town to enter into agreements with one or more municipalities and other governmental units to jointly perform services and shares costs which any one of them is authorized to perform; and

WHEREAS, Boards of Health of the Municipalities are committed to efficiently and consistently promote, protect, and preserve public health, and to improve public health outcomes; and

WHEREAS, the Boards of Health of the Municipalities, together with the Town of Framingham, is participating in the Massachusetts Department of Public Health's Prevention & Wellness Trust Fund program as a joint Collaborative, known as the MetroWest Prevention & Wellness Partnership, whose purpose is to improve health outcomes and reduce health care costs associated with certain chronic health conditions through close collaborations between clinic and community health organizations; and

WHEREAS, part of the Prevention & Wellness Trust Fund program will be carried out by Community Health Workers; and

WHEREAS, the Municipalities desire to share the services of a Regional Community Health Worker to carry out the Prevention & Wellness Trust Fund activities; and

WHEREAS, the Town of Hudson, as the lead community of the MetroWest Prevention & Wellness Partnership, is willing to and capable of acting as the lead municipality to hire and host such Regional Community Health Worker; and

WHEREAS, each party to this Agreement has obtained authority to enter into this Agreement pursuant to M.G.L. c. 40, § 4A. The Municipalities have obtained authorization for the joint undertaking by vote of their respective Boards of Selectmen or City Council with the approval of the Mayor. In addition, the Board of Health of each Municipality has recommended approval of this Agreement.

NOW, THEREFORE, the parties, in mutual consideration of the covenants contained herein, intended to be legally bound thereby, agree under seal as follows:

1. Term. The term of this Agreement shall commence, upon execution by the Municipalities, on March 15, 2015, and end on June 30, 2017, unless earlier terminated as set forth herein.

2. Amendment. This Agreement may be amended only in writing when signed by all member Municipalities duly authorized thereunto.
3. Funding. The funding for this initiative is provided by Massachusetts Department of Public Health's Prevention & Wellness Trust Fund Grant, and a matching grant from MetroWest Health Foundation.
4. Lead Community. During the Term of this Agreement, the Town of Hudson, acting as the lead community, shall employ the Regional Community Health Worker. The Town of Hudson, through its standard personnel practices, shall hire a Regional Community Health Worker to provide services described in Exhibit A: Community Health Worker Job Description, attached and incorporated herein.
5. Financial Safeguards Statements and Audits. The Town of Hudson as the Lead Community, in conjunction with the other municipal participants hereto, shall ensure compliance with the financial safeguards specified in M.G.L. c.40, § 4A, as amended, and shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. The Lead Community, in conjunction with other municipal participants, will also arrange the performance of regular audits of such records kept and arrange for the submittal of periodic financial statements to issue to the participating municipalities hereto.
6. Indemnification. Each party to this Agreement shall be liable for the acts and omissions of its own employees and not for the employees of any other party in the performance of their obligations under this Agreement to the extent provided by the Massachusetts Tort Claims Act, M.G.L. c. 258. By entering into this Agreement, none of the party has waived any governmental immunity or limitation of damages, which may be extended to them by operation of law. The Municipalities shall hold each other harmless from any and all claims related to employment or employee benefits, collectively bargained or otherwise, made by persons under their employ. Each party shall indemnify and hold harmless the other parties to this Agreement from and against any claim arising from or in connection with the performance of this Agreement, to the extent the indemnifier would otherwise be liable under a direct claim pursuant to M.G.L. c. 258 including, without limitation, any claim of liability, loss, damages, costs and expenses for personal injury or damage to real or personal property by reason of any negligent act or omission.
7. Municipal Withdrawal or Termination. Any Municipality may withdraw from and terminate its participation in this Agreement upon the provision of at least thirty (30) days prior written notice to the other Municipalities. No such termination shall affect any obligation of indemnification or contractual obligation that may have arisen hereunder prior to such termination. Termination or withdrawal by one of the Municipalities shall not invalidate this Agreement for the remaining two Municipalities.

8. Assignment. None of the Municipalities shall assign or transfer any of its rights or interests in or to this Agreement, or delegate any of its obligations hereunder, without prior written consent of the other Municipalities.
9. Severability. If any provision of this Agreement is held by a court of appropriate jurisdiction to be invalid, illegal or unenforceable, or if any such term is so held when applied to any particular circumstance, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, or affect the application of such provision to any other circumstances, and the remaining provisions hereof shall not be affected and shall remain in full force and effect.

WITNESS OUR HANDS AND SEALS as of the first date written above.

TOWN OF HUDSON

By its Executive Assistant as approved by the Board of Selectmen,
With no personal liability to himself.

Mr. Thomas Moses

Date

TOWN OF NORTHBOROUGH

By its Town Administrator as approved by the Board of Selectmen,
With no personal liability to himself.

Mr. John W. Coderre

Date

CITY OF MARLBOROUGH

By its Mayor as approved by the City Council,
With no personal liability to himself.

Mr. Arthur Vigeant

Date

Exhibit A

Community Health Worker Job Description

PREVENTION & WELLNESS COMMUNITY HEALTH WORKER

Definition

The Prevention & Wellness Community Health Worker (CHW) is responsible for conducting outreach and education activities related to fall prevention and tobacco cessation as part of the Prevention & Wellness Trust Fund Grant. Work will be conducted across 3 municipalities (Hudson, Marlborough, and Northborough) and will include activities in community and home settings.

Essential Duties and Responsibilities

The essential duties and responsibilities listed below are intended only as illustrations of the various types of responsibilities that may be required. The omission of specific statements does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

1. Responds to project referrals and contacts clients in a timely fashion
2. Conducts community outreach and education about fall prevention, tobacco cessation and smoke-free housing initiatives
3. Schedules and conducts in-home environmental assessments to identify potential fall hazards and smoke intrusion
4. Communicates regularly with clients to keep them engaged in the project
5. Works with clients to develop home safety plans
6. Connects clients to home contractors for safety equipment and home modifications as needed
7. Works with project staff to engage landlords in smoke-free housing policies
8. Collects required client information and documents client interactions
9. Works with project staff to complete reports
10. Provides feedback to project partners
11. Refers clients to other partners for education, counseling, exercise or clinical services as needed
12. Participates in project related meetings, conference calls, webinars and training

Supervision

Works under the administrative supervision of the Supervisor for Community Health Programs in accordance with applicable rules, regulations, and policies. Varied and responsible duties require the exercise of judgment and initiative, particularly in situations not clearly defined by precedent or established procedures.

Recommended Minimum Qualifications

- Commitment to health promotion with special attention to the underserved and diverse communities
- Minimum 3 years of experience working or volunteering in the community
- Knowledge of Hudson, Marlborough and Northborough
- Marlborough or Hudson residency strongly preferred
- Fluency in English and Portuguese required
- Fluency in Spanish a plus
- High school degree or equivalency required, Associates Degree preferred
- Experience working with members of diverse languages and cultures
- Interest or experience working with older adults
- Ability to interact effectively and appropriately with the public and co-workers
- Ability to motivate individuals to change health behavior
- Strong organization skills
- Basic computer skills, willingness to learn new computer programs as needed
- Comfortable working in a variety of environments including office, community and home settings
- Comfortable working in-person with families and individuals

- Comfortable working with a variety of project staff in Hudson, Marlborough and Northborough
- Current Massachusetts driver's license and daily access to a car for use. Good driving history is required.
- Grant funded position through June 30, 2017

Work Environment

Work is performed in office, community and home settings. Local travel is required.

The employee operates standard office equipment.

The employee has ongoing contact with other town departments, outside agencies, and the public by telephone, e-mail, in person, and in writing.

This position may require direct client/patient contact and as a result of such direct contact, certain immunizations will be recommended and/or required prior to commencement of employment duties.

Physical Requirements

Moderate physical effort is required to perform duties under typical office conditions and travel to off-site locations. The employee is frequently required to sit, speak and hear and use hands to operate equipment. Off-site locations may include meeting spaces, clinicians' offices, hospitals, and homes of patients/clients. Vision requirements include the ability to read and analyze documents and use a computer.

A Criminal Offenders Records Information request must be completed for this position. However, a record is not an automatic bar to employment but is reviewed in relation to the job applied for.

This job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Job Title: Prevention & Wellness Community Health Worker
Salary: \$36,451 (with annual step increases)
Job Type: Salary, Full-time (37.5 hours per week), non-union
Location: 78 Main Street, Hudson, MA 01749