

## **CHAPTER II**

### **Regulation of the Town of Sudbury Board of Health Restricting the Sale of Tobacco Products**

#### **SECTION 1: AUTHORITY**

In accordance with the authority granted by the Massachusetts General Laws, Chapter 111, Section 31, the Sudbury Board of Health hereby adopts the following rules and regulations to restrict the use, sale, vending, and distribution of tobacco products within the Town of Sudbury.

#### **SECTION 2: PURPOSE Health Consequences of Smoking**

Since 1960, more than 60,000 scientific reports have linked the use of tobacco to cancer; respiratory disease; cardiovascular disease; low birth weight and birth defects; asthma and other allergic reactions; eye, nose, and throat irritations; and other negative health effects to smokers.<sup>(1)</sup>

Cigarette smoke contains more than 4,000 chemicals, about 200 of which are toxic poisons. A partial list of these contaminants includes acetone, acetylene, ammonia, arsenic, benzene, carbon monoxide, DDT, formaldehyde, hydrogen cyanide, lead, mercury, methanol, and vinyl chloride.<sup>(2)</sup>

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eye, nose and throat;<sup>(3)</sup>

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 station;<sup>(4)</sup>

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes;<sup>(5)</sup>

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin. <sup>(6)</sup>

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009;

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

The use of so-called smokeless tobacco (otherwise known as “chew tobacco” or “spit tobacco”) is also of concern. Use of this product has been linked with gum disease, cancer, and various heart-related problems ;( 7)

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth ;( 8)

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 14.9% in 2009.(9)

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009 and was higher than the rate of current cigarette use (16%) for the first time in history; (10)

Whereas research shows that increased cigar prices rise significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 34%; (11)

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes; (12)

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit(13) and high prices deter youth from starting.(14) 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); (15)

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

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

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

### **Environmental Tobacco Smoke**

Over the past decade, scientific studies have shown that the involuntary exposure of nonsmokers to smoke from other people's tobacco products (otherwise known as "environmental tobacco smoke" [ETS], "secondhand smoke," or "passive smoke") poses a severe risk for nonsmokers, including increased risks of lung cancer and other diseases.

In a 1993 report, the U.S. Environmental Protection Agency (EPA) designated tobacco smoke as a Group A carcinogen, for which there is no known safe level of exposure.

(15)The EPA report concluded the following:

- 1.) Each year ETS causes approximately 3,000 lung cancer deaths in the U.S.
- 2.) ETS has a particularly harmful effect on people with asthma, especially children and others with respiratory illness.
- 3.) Each year ETS exposure causes between 150,000 and 300,000 cases of bronchitis and pneumonia in children alone.

It is for this reason that increasing numbers of cities, towns, and counties are taking steps to ban smoking in all public places and workplaces.<sup>(16)</sup> Scientific studies have shown that designated smoking areas do not effectively block exposure of nonsmokers to ETS.<sup>(17)</sup>

### **Youth at Risk**

The Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives <sup>(18)</sup>.

The Massachusetts Department of Public Health has estimated that 100 children in our state start smoking every day. If current smoking rates continue, it is expected that 120,000 Massachusetts children who are alive today will die from cigarettes. <sup>(19)</sup>

Public health officials have recognized that one of the most effective means of preventing adolescents from smoking is to eliminate their access to tobacco products. It is already against the law to sell tobacco to persons under the age of 18. What is lacking is effective

enforcement of those laws. Several studies have shown that store clerks in the vast majority of retail outlets commonly disregard the law against selling tobacco to minors. (20)

Communities that are densely populated with tobacco retailers make it easier for youths to obtain tobacco products. Also, because retail outlets are a key marketing channel for tobacco products, a high density of tobacco retailers in a neighborhood creates a concentration of tobacco marketing, meaning children, youth and adults living in those neighborhoods will be exposed to multiple environmental cues designed to encourage tobacco use.

Studies have shown that youth who live and go to schools in neighborhoods with the highest density of tobacco outlets (or with the highest density of retail tobacco advertising) have higher smoking rates compared to youth who live, or attend school, in neighborhoods with fewer or no tobacco outlets.

Studies have also shown that limitations on the number of tobacco retailers, combined with strong licensing requirements, has a positive effect on reducing youth smoking rates.

Vending machines are another important source of tobacco for children. A study conducted by the National Automatic Merchandising Association found that 24% of 13 to 17-year-olds who smoke reported that they purchase cigarettes from vending machines “often or occasionally.” Even more striking, the study found that 13-year-olds were 11 times more likely than 17-year-olds to say they “often” buy tobacco from vending machines (22% vs. 2%). (21) “For younger or less confident children,” according to the Institute of Medicine, “vending machines may provide a less intimidating avenue for purchasing tobacco than over-the-counter sales.”(22)

59% of high school smokers in Massachusetts have tried flavor cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored.(23) The federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, (24) largely because these flavored products were marketed to youth and young adults, (25) and younger smokers were more likely to have tried these products than older smokers (26), 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.

## **Conclusion**

Based on these facts, the Board of Health finds and declares that regulations on the use, sale, vending, and distribution of tobacco and tobacco products within the Town of Sudbury are both necessary and warranted.

The purpose of these regulations are as follows:

- 1.) To protect the public health and welfare by prohibiting smoking in public places, municipal buildings, schools, and workplaces.
- 2.) To guarantee the right of nonsmokers to breathe smoke-free air in public places, municipal buildings, schools, and workplaces.
- 3.) To implement a strict and enforceable system to prevent the illegal sale of tobacco and tobacco products to minors.
- 4.) Limit youth exposure to tobacco products and advertising by requiring permits for tobacco sales and limiting the number of retailers operating in the Town of Sudbury.

### **Section 3: DEFINITIONS**

As used in these regulations:

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 means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, and including professional corporations or other entities that provide or deliver architectural, dental, engineering, legal, medical, or other professional services.

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.

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.

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: Perceived by either the sense of smell or taste.

E-Cigarette: Any electronic nicotine delivery product composed of a mouth piece, heating element, battery and/or electronic circuits that provides a vapor or liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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 means any individual who performs services for a business employer in return for wages, profit, or other benefit, plus any individual who performs services on a volunteer basis. Domestic employees are exempt from these regulations.

Employer means any individual, partnership, association, corporation, trust, nonprofit agency, or other organized group of individuals, including the Town of Sudbury or any agency thereof, which regularly uses the services of one (1) or more employees.

Enclosed Area means a space between floor and ceiling which is enclosed on all sides by solid walls, exclusive of windows and doors, which extend from the floor to the ceiling.

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 other 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 and dentist offices.

Sports Arena means any gymnasium, health and fitness center, swimming pool, football stands or other similar space where members of the public assemble to engage in physical exercise, participate in athletic competition, or view sporting events from seating or observation areas.

Student(s) means any student of the Sudbury and Lincoln-Sudbury School Districts.

Minor means a person less than twenty-one (21) years of age.

Municipal Building means a building owned, leased or rented by the Sudbury Town Government.

Municipal Vehicle means any vehicle owned, leased or rented by the Town of Sudbury.

Non-profit Agency means any individual, partnership, corporation, or other entity that provides goods or services on a not-for-profit basis.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless 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.

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.

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

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Public Place means an enclosed indoor area that is used by or otherwise accessible to the general public and including but not limited to the following facilities:

- auditoriums;
- automobile sales rooms, dealerships, repair shops, and service stations;
- bank and automatic teller machine (ATM) lobbies;
- clinics and other health care facilities;
- clubs, rooms, and halls when used for public meetings or public gatherings;
- common areas of apartment buildings and condominiums;
- elevators accessible to the public;
- entranceways accessible to the public;
- game arcades;
- gasoline stations;
- grocery store, supermarket, and convenience stores;
- halls and rooms when used for public meetings or public gatherings;
- hallways accessible to the public
- hair salons and cosmetology establishments;
- health and fitness centers;
- laundromats;
- libraries;
- licensed child care locations, including child care homes;
- municipal buildings;
- museums and galleries;
- places of public worship;
- public restrooms;
- restaurants and other retail food establishments;
- retail stores;
- schools and other educational facilities;
- indoor stairwells accessible to the public;
- theaters or other facilities used for stage production, play, lecture, musical recital, or other similar performance, except when smoking is part of said performance; and
- Video rental stores.

Restaurant means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and other eating establishments which gives or offers food for sale to the public, guests, or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail Tobacco Store: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco 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 Sudbury Board of Health.

Self-service Display means a person or entity may only sell tobacco products in a face-to-face exchange between the retailer and the consumer. Examples of methods of sale which are not permitted include, but are not limited to, vending machines and self-service displays.

Smoking means the lighting of any cigarette, cigar, pipe, or other tobacco product or having possession of any lighted cigarette, cigar, pipe, or other 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, section 22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

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.

Tobacco Products : means 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, liquid nicotine, “e-liquids” or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. “Tobacco product” includes any component or part of a tobacco product. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Tobacco Vending Machine means any machine or other device that is designed for or used for the vending of tobacco products.

Workplace means an enclosed indoor area in which one (1) or more employees perform services for their employer. The workplace also includes conference rooms, elevators, employee lounges, entranceways, hallways, restrooms, stairways, and other areas that are frequented during the course of employment. Domestic employment is excluded.

#### **SECTION 4: PROHIBITION OF SMOKING IN RESTAURANTS**

A. All restaurants shall be 100% non-smoking per MGL Ch. 270, §22.

- B. The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts law and this Section of this regulation.

#### **SECTION 5: PROHIBITION OF SMOKING IN PUBLIC PLACES**

- A. Smoking is prohibited in all indoor public places within the Town of Sudbury. Smoking is also prohibited in all sports arenas, both indoor and outdoor, except as stated in Section 4, and on all public school property.
- B. It shall be unlawful for any owner, operator, manager, or person in charge of any public place covered by these regulations to permit, or for his or her agent or designee, to permit a violation of this regulation.
- C. The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts law and this Section of this regulation.
- D. The owner, operator, manager, or person in charge of any public place covered by this regulation shall prevent smoking in non-smoking areas by:
  - 1. Conspicuously posting a notice or sign of a minimum of one-half (1/2) inch bold type at each entrance to the public, which indicates that smoking is prohibited.
  - 2. Requiring patrons or others who may be smoking in a non-smoking area to refrain from smoking or to leave the premises.
  - 3. Using any other legal means, which may be appropriate to enforce this regulation.

#### **SECTION 6: PROHIBITION OF SMOKING IN THE WORKPLACE**

- A. Smoking is prohibited in all workplaces within the Town of Sudbury, as defined in the definitions, except as otherwise specifically permitted under this regulation.
- B. Smoking is prohibited in all municipal vehicles, as defined in the definitions.
- C. The owner, operator, manager, or person in charge of any workplace shall conspicuously post a notice or sign at each entrance to the workplace, which indicates that smoking is prohibited.
- D. It shall be unlawful for any owner, operator, manager, or person in charge of any workplace to permit, or for his or her agent or designee to permit a violation of this regulation.

- E. The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts law and this Section of this regulation.

## **SECTION 7: OTHER APPLICABLE LAWS**

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

## **SECTION 8: TOBACCO SALES PERMITS**

- A. No person shall sell or otherwise distribute tobacco products at retail establishments within the Town of Sudbury without first obtaining a Tobacco Product Sales Permit issued annually by the Sudbury Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Sudbury are eligible to apply for a permit and sell tobacco products at the specified location in the Town of Sudbury.
  
- B. The Sudbury Board of Health will issue permits under the following rules:
  - 1. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Sudbury Board of Health 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.
  - 2. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco Product Sales Permit can be issued.
  - 3. The fee for a Tobacco Product Sales Permit shall be determined by the Sudbury Board of Health annually.
  - 4. The permit must be renewed by January 1 of each year.
  - 5. A separate permit is required for each retail establishment selling tobacco products.
  - 6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
  - 7. No Tobacco Product Sales Permit shall allow any employee to sell tobacco products until such employee reads this regulation and federal and state laws

regarding the sale of tobacco and signs a statement, 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 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. Issuance and holding of a Tobacco Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.
11. 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.
12. Maximum Number of Tobacco Product Sales Permits
  - A. At any given time, there shall be no more than **10** Tobacco Product Sales Permits, ~~or the number of permits on July 1<sup>st</sup> 2017 whichever is greater~~, issued in Sudbury, **reduced by the number of permits retired pursuant to Section B below**. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within (30) days of expiration ~~will be treated as a first-time permit applicant.~~ <sup>[GJC1]</sup> Failure to renew will deem the permit surrendered and will be retired pursuant to Section B.
  - B. **As of September 11, 2018, any permit surrendered either because a retailer no longer sells tobacco products, as defined herein, because a retailer closes the retail business, or because the permit is revoked in accordance with Section 11 of this Regulation, shall be returned to the Town of Sudbury Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Sales Permits under paragraph (A) shall be reduced by the number of the retired permits.**
  - C. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the

property line of the school to the nearest point of the property line of the site of the applicant's business premises.

- D. Applicants who purchase an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein with **the exception that no Tobacco Product Sales Permit will be issue to a Retail Tobacco Store.**

## **SECTION 9: PROHIBITION OF TOBACCO SALES AND DISTRIBUTION TO MINORS**

- A. In conformance with Massachusetts General Laws, Chapter 270, Section 6, no person or entity shall sell any tobacco product to any person under the age of eighteen (18), or, not being his/her parent or guardian, give or otherwise distribute any tobacco product to any person under the age of eighteen (18).
- B. No retailer may sell cigarettes or smokeless tobacco or cigars to any person younger than twenty-one (21) years of age. Each retailer shall verify by means of photographic identification containing the bearer's date of birth that no person purchasing the product is younger than 21 years of age. No such verification is required for any person over the age of twenty-six (26).
- C. In conformance with Massachusetts General Laws, Chapter 270, Section 7, a notice provided by the Massachusetts Department of Public Health that provides the text of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner, operator, manager, or person in charge of any location used to sell tobacco products. Such notice shall be at least forty-eight (48) square inches; shall be posted at every cash register which receives tobacco sales in such a manner that it may be readily seen by a person standing at or approaching the cash register from a distance of five (5) feet; 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.
- D. 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 Sudbury Board of Health that discloses current referral information about smoking cessation.

## **SECTION 10: OTHER PROVISIONS RELATED TO THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS**

- A. Except as otherwise provided in this subsection, a person or entity may only sell tobacco products in a direct face-to-face exchange between the retailer and the

consumer. Examples of methods of sale which are not permitted include, but are not limited to, vending machines and self-service displays.

- B. All vending machines containing tobacco products, as defined herein, are prohibited.
- C. Non-Residential Roll-Your-Own-Machines: All Non-Residential Roll-Your-Own machines are prohibited.
- D. Prohibition of the Sale of Tobacco Products by Educational Institutions: No health care institution in the Town of Sudbury shall sell or cause to be sold tobacco products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.
- E. Prohibition of the Sale of Tobacco Products by Health Care Institutions: No health care institution located in the Town of Sudbury shall sell or cause to be sold tobacco products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.
- F. No minor may be in possession of a tobacco product on public school property, within the Town of Sudbury.
- G. Cigar Sales Regulated:
  - 1. No person shall sell or distribute or cause to be sold or distributed a single cigar. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
  - 2. This Section shall not apply to:
    - (a) The sale or distribution of any 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 the Town of Sudbury.
  - 3. The Sudbury 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.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in the Town of Sudbury.

I. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products except in smoking bars. No means, instruments or devices that allow for the redemption of all tobacco products 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:

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 are prohibited except in smoking bars. All humidors including, but not limited to, walk-in humidors must be locked except in smoking bars.

L. Sale of Flavored Tobacco Products Prohibited:

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

**SECTION 11: ENFORCEMENT AND PENALITES**

1. The Board of Health may suspend or revoke any permit issued pursuant to these regulations for any violation of these regulations, or any other applicable General Law, regulation or by-law. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit holder is given seven (7) days written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.
2. Upon a finding of a violation as set forth in paragraph 1, permit holders may be subject to discipline based on the following guidelines:

First Violation: Permit Suspension, 1 to 7 days

Second Violation: Permit Suspension, 7 to 30 days  
Third Violation: Permit Suspension of 30 days or Revocation of Permit  
Fourth or  
subsequent violation: Revocation of Permit

Only offenses which have occurred within the thirty-six months preceding the date of violation shall be used in calculating the number of offenses for purposes of the sentencing guidelines.

The sentencing guidelines are only a guide. The Board may use its discretion in determining whether the facts surrounding a violation warrant a penalty which is more lenient or severe than that suggested by the guidelines.

The sentencing guidelines shall not be construed so as to limit the Board's authority to consider alternative dispositions, or further conditions on a license, or even alternate penalties (e.g. roll back of operating hours).

3. This regulation may be enforced by any Town police officers or agents of the Town's Board of Health. Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition by-law, General Bylaw Section 1-1-6. If noncriminal disposition is elected, then the non-criminal fine for each such violation, if not otherwise specified, shall be:

First Offense:	\$100
Second Offense:	\$200
Third and Subsequent Offenses:	\$300

Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

4. Whoever violates any provision of this by-law may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be one thousand dollars (\$1,000). Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.
5. The Board of Health may enforce these Regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

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 pertaining to his or her distribution of tobacco products. 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 24 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 24 month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive days.~~
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 directly to a consumer while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.~~
4. ~~The Sudbury Board of Health shall provide notice of the intent to suspend or 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 therefore in writing. After a hearing, the Sudbury Board of Health shall suspend the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in to court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension of the Tobacco Product Sales Permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.~~
5. ~~Non-Criminal Disposition:~~

~~Whoever violates any provision of this regulation may be penalized by the noncriminal 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 a separate offense.~~

- ~~6. Enforcement of these rules and regulations shall be implemented by the Board of Health, its staff, or other officials who may be designated by the Board of Health as its agent(s). The Board may enforce these regulations through the non-criminal disposition by law as provided in the Massachusetts General Law Chapter 40, Section 21D.~~
- ~~7. Sudbury school officials designated by the Sudbury Board of Health shall have authority to enforce these provisions as they relate to violations on school property or within 300 yards of school property.~~
- ~~8. Each day that any violation of these rules and regulations occurs shall constitute a separate and punishable violation.~~
- ~~9. Upon determination by the Board of Health that a violation has been committed or allowed to occur, the Board of Health shall notify the responsible person or entity in writing of that violation.~~
- ~~10. Penalties provided for under these rules and regulations are as follows:~~
  - ~~1. Prohibition of Smoking in Restaurants, Public Places, and Workplaces (Sections 4, 5, and 6.)~~
    - ~~a. Any minor and or student who smokes in a non-smoking area or within 300 yards of public school property shall be subject to a fine of one hundred dollars (\$100.00) for a first offense; or shall complete the participation in a tobacco education class only for the first offense; in either case the parent(s) and or legal guardian(s) shall be notified of the minor's or student's infraction; each subsequent offense will result in a one hundred dollar (\$100.00) fine.~~
    - ~~b. Any person, other than a student or minor who smokes in a non-smoking area shall be subject to a fine of one hundred dollars (\$100.00) for a first offense; or shall complete the participation in a tobacco education class only for the first offense; each subsequent offense will result in a one hundred dollar (\$100.00) fine.~~
    - ~~c. Any owner, operator, manager or person in charge of any public place, school, or workplace who fails to comply with these regulations shall be subject to a fine of two hundred dollars (\$200) for the first offense and for each subsequent day a violation occurs.~~
  - ~~2. Minors Found In Possession Of Tobacco Products~~

- a. ~~If any minor is found in possession of a tobacco product on school property the penalties will be as follows:~~
  - (1) ~~In the case of a first or second violation:~~
    - (a) ~~notify the violator's parent(s) or legal guardian(s) of the infraction; and at the violator's option:~~
      - i.) ~~Require that those in violation attend a tobacco education class. E.g. TEG Program or comparable tobacco awareness program.~~
      - ii.) ~~Write the violator a ticket for one hundred dollars (\$100.00) payable to the Town of Sudbury within twenty one (21) calendar days.~~
    - (2) ~~In the case of a third or subsequent violation:~~
      - (a) ~~notify the violator's parent(s) or legal guardian(s) of the infraction; and~~
      - (b) ~~Write the violator a ticket for one hundred dollars (\$100.00) payable to the Town of Sudbury within twenty one (21) calendar days.~~
3. ~~No School Employee Shall Use Tobacco Products On Public School Property Within The Town Of Sudbury.~~
  - 1.) ~~In the case of the first violation:~~
    - (a) ~~Require that the violator attend a tobacco education class, e.g. TEG & TAP Program or~~
    - (b) ~~Write the violator a ticket for one hundred dollars (\$100.00) payable to the Town of Sudbury within twenty one (21) calendar days.~~
  - 2.) ~~In the case of a second or subsequent violation any school employee or any person other than a student or minor found to be in violation of this section shall be written a ticket for one hundred dollars (\$100.00) payable to the Town of Sudbury within twenty one (21) calendar days.~~
4. ~~Tobacco Sales Permits (Section 8)~~
  - a. ~~A fine of fifty dollars (\$50) per day will be imposed for each day that tobacco products are offered for sale without a permit.~~
5. ~~Prohibition of Tobacco Sales/Distribution to Minors (Section 9)~~

- a. ~~For violations listed as follows in Section 9.B., the Board of Health shall provide notice to the permit holder 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, such date shall not be earlier than seven (7) days after the date of said notice. The permit holder 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. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. A permit holder whose permit has been revoked may not apply for a new permit prior to the expiration of one (1) calendar year following the date of revocation.~~
  - b. ~~Any person or entity who sells or otherwise distributes tobacco products to minors shall be subject to a fine of one hundred dollars (\$100) for the first offense, two hundred dollars (\$200) for the second offense, and three hundred dollars (\$300) and suspension for thirty (30) calendar days of the tobacco sales permit for any third or subsequent offense which occurs within any twelve month period after the third offense.~~
  - c. ~~An owner, operator, manager, or person in charge of any location used to sell tobacco products who fails to post the required notice concerning the illegality of sales to minors, in conformance with Massachusetts General Laws, Chapter 270, Section 7, shall be subject to a fine of fifty dollars (\$50) for each day such notice is not posted.~~
6. ~~Other Provisions Related to the Sale and Distribution of Tobacco Products (Section 8)~~
- a. ~~For violations listed as follows in Section 9.A. and 9.B., the Board of Health shall provide notice to the permit holder of the intent to suspend or revoke a tobacco sales permit, which notice shall contain the reasons therefor and establish a time and date for a hearing, such date shall not be earlier than seven (7) days after the date of said notice. The permit holder 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. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco sales permit. Failure to remove shall constitute a separate violation of this section. A permit holder whose permit has been revoked may not apply for a new permit prior to the expiration of one (1) calendar year following the date of revocation.~~
  - b. ~~Any person or entity who fails to comply with any part of Section 8 shall be subject to a fine of one hundred dollars (\$100) for the first offense, two hundred dollars (\$200) for the second offense, and three hundred dollars (\$300) and~~

suspension for thirty (30) calendar days of the tobacco sales permit for any third or subsequent offense within any twelve month period.

**TABLE 1**  
**Summary of Penalties**

<b><u>Offense</u></b>	<b><u>Penalty</u></b>
Smoking in prohibited area	\$100 per offense
Failure to comply by owner	\$200 per day
Minors found smoking on or within 300 yards of public school property	\$100 per offense
Minors found in possession of tobacco On public school property	\$100 per offense
Tobacco for sale without permit	\$100, 200, 300 Per offense, Revocation for 30 days after Third offense
Failure to post notices	\$50 per day
Failure to comply with Section 10	\$100, 200, 300 Per offense, Revocation for 30 days after Third offense

**SECTION 12: GRIEVANCE PROCEDURES**

- A. Any person(s) aggrieved by any of the foregoing regulations may appear before the Sudbury Board of Health for possible relief. Said appearance shall be accompanied by a written request for relief to be determined by the Board of Health.

**SECTION 13: SEVERABILITY**

If any paragraph, sentence, or clause of these regulations, or their specific application in any particular circumstance, is held to be invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

## SECTION 14: EFFECTIVE DATE

These regulations shall be effective as of: July 1st, 2017.

**Revised: September 11, 2018**

## SUDBURY BOARD OF HEALTH

**Carol Bradford, Chairperson** \_\_\_\_\_,

**Linda Huet-Clayton, Member** \_\_\_\_\_,

**Susan Sama, Member** \_\_\_\_\_,

**Voted and Approved at the Board of Health Meeting dated** \_\_\_\_\_

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