



TOWN OF WATERTOWN

Health Department

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REGULATION REGARDING SMOKING AND THE SALE AND USE OF TOBACCO PRODUCTS

A. Statement of Purpose

It is the intention of the Watertown Board of Health to regulate smoking in the workplace and in public places, and the use and sale of tobacco products.

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac disease, negative birth outcomes, irritations to the eyes, nose and throat; and

Whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and

Whereas in the year 2000, the Public Health Service's National Toxicology Program listed environmental tobacco smoke as a known human carcinogen; and

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

Whereas the U.S. Food and Drug Administration has conducted laboratory tests that found e-cigarettes contain toxic chemicals and carcinogens; and the health effects of involuntary exposure to e-cigarette vapors containing these chemicals and carcinogens is unknown; and

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

Whereas nationally in 2009, seventy-two percent of high school smokers and sixty-six percent of middle school smokers were not asked to show proof of age when purchasing cigarettes; and

Whereas the Massachusetts Supreme Judicial Court has upheld that government may protect the public health by any rational means; and

Whereas according to the Center for Disease Control's (CDC's) youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013; [1] and

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; [2] and

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%; [3] and

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking. [4]

B. Authority

This regulation is promulgated under the authority granted to the Watertown Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

C. Definitions

For the purposes of this regulation, the following words shall have the meanings respectively ascribed to them as follows:

Adjacent - contiguous or adjoining.

Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

Board - the Board of Health of the Town of Watertown.

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 mouth piece 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, including the Town of Watertown or any agency thereof that uses the service of one or more *employees*.

Enclosed - a space bounded by walls (with or without windows) continuous from floor to ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

Establishment - a place of business, whether for profit or non-profit.

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., Chapter 112 or a retail *establishment* that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00; Health Care Institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctors' offices and dentists' offices.

Humidor - an enclosed device that controls the temperature and/or humidity for the purposes of maintaining the quality of tobacco.

Liquid Nicotine Container - a bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended

for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

MDPH - Massachusetts Department of Public Health.

Minimum Legal Sales Age (MLSA) - the age an individual must be before that individual can be sold a *tobacco product* in the municipality, which in the *Town* shall be twenty-one (21).

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 solely for 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.

Private Club - A not-for-profit *establishment* created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans' club license" as defined in M.G.L. Ch. 138, section 12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Restaurant - Any coffee shop, cafeteria, sandwich stand, private and public *school* cafeteria, and other food *establishments* which give or offer food for sale to the public, guests, or employees for on-premises consumption, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

Retail Food Store - Any food *establishment* commonly known as a supermarket, grocery store, bakery or convenience store, or any other food *establishment* in which the primary activity is the sale of food items to the public for off-premises consumption.

Retail Store - Any establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles or other items.

Retail Tobacco Store - Any establishment whose primary purpose is to sell or offer for sale *tobacco products* and/or tobacco paraphernalia, in which the sale of other products is merely incidental; neither possesses nor is required to possess a food establishment permit; entry of persons under the *MLSA* of twenty-one (21) is prohibited at all times and maintains a valid permit for the retail sale of *tobacco products* as required by the *Board*.

School - public or private elementary or secondary education institution.

Self-service Display - any display from which customers may select a *tobacco product* without assistance from an *employee* or store personnel.

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 - 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 M.G.L., Chapter 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."

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, 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.

Town - the Town of Watertown.

Vaping - the act of using a product, regardless of nicotine content, that relies on vaporization or aerosolization.

Vending Machine - any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes any *tobacco products*.

Workplace - any enclosed indoor and *adjacent* outdoor area, structure or facility or portion thereof at which one or more *employees* perform services for their *employer*.

D. Smoking or Vaping

1) *Smoking* or *vaping* is prohibited in all *workplaces*; all buildings, facilities or vehicles owned, leased, operated or occupied by the municipality, including *school* buildings, playgrounds, parks, recreational facilities and athletic fields; areas within 25 feet of all municipal buildings; any *enclosed* area open to the general public, including but not limited to: *retail tobacco stores not in operation as such after April*

1, 2016, *smoking bars that do not sell or serve beverages of any kind*, restaurants, bars, *retail stores, retail food stores*, libraries, museums, theaters, banks, laundromats, indoor sports arenas, auditoriums, inn/hotel/motel lobbies, private and public *educational institutions, health care institutions*, shopping malls, common areas of residential buildings, public restrooms, lobbies, staircases, halls, exits, entrance ways, elevators accessible to the public; licensed child-care locations; Bed & Breakfast establishments; outdoor seating associated with food service establishments or bars; outdoor seating areas for public events and waiting areas for public transportation, buses or taxis if there is an enclosure with at least two sides.

2) It shall be unlawful for any *employer* or other person having control of the premises upon which *smoking* is prohibited by this Regulation or the *business agent* or designee of such person, to permit a violation of this Regulation.

3) Every *person* having control of premises upon which *smoking* is prohibited by and under the authority of this Regulation shall conspicuously display upon the premises "No Smoking" signs provided by *MDPH* and available from the Board or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) and comparable in size to the sign provided by *MDPH*.

E. Exceptions to Section D Smoking or Vaping

Notwithstanding the provisions of Section D of this regulation, smoking or vaping may be permitted in the following places and/or circumstances:

1) **Private residences**, except those portions used as a child care or health care office when operating as such.

2) **Hotel and motel rooms** rented to guests that are designated as "smoking rooms," provided that at least 75% of the rooms are smoke-free at all times. A room so assigned shall have signs posted indicating that smoking is allowed therein and shall have self-closing doors. No change in room designations shall take place without prior written approval of the *Board*.

3) **Private clubs** if all employees are members. When a private club is open to the general public, that portion of said establishment open to the general public must be smoke-free, separately enclosed and shall have self-closing doors.

4) **Nursing Homes** according to M.G.L., Chapter 270, Section 22.

F. Tobacco Product Sales Permit

1) No person shall sell or otherwise distribute *tobacco products* at retail within the *Town* without first obtaining a permit issued annually by the *Board*.

2) Only owners of *establishments* with a permanent, non-mobile location in Watertown are eligible to apply for a permit to sell *tobacco products* at a specified location in the *Town*.

- 3) As part of the permit application process, the applicant will be provided with a copy of this Regulation. The applicant is responsible for instructing any and all employees who will be responsible for *tobacco product* sales regarding both State laws regarding the sale of *tobacco products* and this Regulation. Each applicant is required to sign a statement declaring that the applicant has read said Regulation and certifying that the applicant understands the obligation to instruct any and all employees who will be responsible for *tobacco product* sales regarding both State laws regarding the sale of *tobacco products* and this Regulation. As a condition for obtaining and/or renewing a permit, the *Board* may require an applicant, and/or an applicant's *employees*, to participate in training programs provided by or approved by the *Board*.
- 4) Each applicant who sells or intends to sell *tobacco product* is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a permit can be issued.
- 5) The permit fee shall be determined by the *Board* and all permits shall be renewed annually by November 30th.
- 6) A separate permit is required for each retail *establishment*.
- 7) Each permit shall be displayed at the *establishment* in a conspicuous place.
- 8) No *permit holder* shall allow any *employee* to sell *tobacco products* until such *employee* reads this Regulation 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 laws.
- 9) Tobacco Product Sales Permits are non-transferable.
 - a. In the event of a sale of an *Establishment* licensed to sell Tobacco Products, the buyer of such *Establishment* must apply for a new permit within thirty (30) days of purchase if the owner intends to sell *tobacco products*.
 - b. In the event that the owner of an *Establishment* licensed to sell *Tobacco Products* seeks to relocate such *Establishment* to a different physical location, in order to avoid the application of the provisions of Section F(12) below, the owner must apply within thirty (30) days of such relocation for a new permit stating the address of the new physical location, provided, however, that such new location must comply with the requirements of Section F(12)(c) below. Priority consideration for the issuance of a new permit shall be given to a current permit holder seeking to relocate its *Establishment* over an application submitted by the purchaser of the former or another location.
 - c. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder, or by the current permit holder at the previous retail location, are satisfied in full.
- 10) Consistent with the laws of the Commonwealth, issuance of a permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her *establishment* to ensure compliance with this Regulation.
- 11) A 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.

12) Maximum Number of Tobacco Product Sales Permits.

a. There shall be no more than thirty-six (36) Tobacco Product Sales Permits issued in Watertown. That number shall be reduced by the number of permits not renewed pursuant to subsection (b) below. No permit renewal will be denied based upon the requirements of this subsection; however, any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

b. Any permit not renewed or effectively terminated because a retailer ceases operation of the *Establishment*, except as otherwise provided for in these regulations, shall be returned to the Watertown Health Department and shall be permanently retired by the Health Department, and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of retired permits. The Board of Health shall maintain a register indicating the actual number of Tobacco Product Sales Permits reflecting the reduction in number from time to time.

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. An applicant who purchases an *Establishment* whose owner holds a valid Tobacco Product Sales Permit at the time of the sale of said *Establishment* must apply within thirty (30) days of such sale for a Tobacco Product Sales Permit if the applicant intends to sell *Tobacco Products*.

G. Tobacco Sales to Persons Under the Minimum Legal Sales Age is Prohibited

1) No person shall sell, or permit *tobacco products*, as defined herein, to be sold, to a person under the *MLSA* of twenty-one (21); or not being the person's parent or legal guardian, give *tobacco products* as defined herein to a person under the *MLSA*.

2) Each person selling or distributing *tobacco products* as defined herein shall verify, by means of a valid government-issued photographic identification containing the bearer's date of birth, that the purchaser is the *MLSA* of twenty-one (21) years old or older. Verification is required for any person under the age of twenty-seven (27).

3) 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.

H. Required Signage at Permitted Locations

1) In conformance with, and in addition to, M.G.L. Chapter 270, Section 7, a copy of M.G.L. Chapter 270, Section 6, shall be posted conspicuously by the *permit holder* or other person in charge in any retail *establishment* selling *tobacco products*. The notice, which is provided by *MDPH* is available at the *Town Health Department*. The notice shall be at least 48 square inches and shall be posted conspicuously by the *permit holder* in the *establishment* in such a manner so that it may be readily seen by a person standing at, or approaching, the cash register. The notice shall directly face the purchaser

and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The *permit holder* or other person in charge of a permitted *establishment* shall conspicuously post any additional signs required by the *MDPH*.

2) The *permit holder* or person in charge shall conspicuously post signage provided by the *Board* that discloses current referral information about smoking cessation.

3) The permit holder or person in charge shall conspicuously post a sign, no smaller than 8.5 by 11 inches, stating that "The sale of *tobacco products*, including e-cigarettes, to persons under the *MLSA* of twenty-one (21) years of age is prohibited and that the use of *e-cigarettes* is prohibited indoors the same as all other tobacco products." This sign shall also be posted in the same location as the sign described in #1 above.

I. Prohibited Activities

1) **Free distribution and Coupon Redemption:** No person shall distribute, or cause to be distributed, any free samples of *tobacco products*. No means, instruments or devices that allow for the redemption of 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*.

2) **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. This prohibition includes 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.

3) **Self-Service Displays:** All *self-service displays* of *tobacco products* are prohibited. The only exception is *humidors* located in *retail tobacco stores* where the retailer ensures that no person younger than the *MLSA* of twenty-one (21) years of age is present, or permitted to enter, at any time. However, *humidors*, including, but not limited to, walk-in *humidors*, must be locked and accessed by a customer in the presence of an *employee*.

4) **Vending Machines:** All *tobacco product vending machines* are prohibited.

5) **Non-Residential Roll-Your-Own Machines:** All *non-residential roll-your-own machines* are prohibited.

6) **Sale of Flavored Tobacco Products Regulated:** No person shall sell or distribute or cause to be sold or distributed any flavored *tobacco product* (except tobacco, menthol, mint or wintergreen flavors) at retail except in *retail tobacco stores* and/or *smoking bars*.

7) **Prohibition on the Sale of Blunt Wraps:** No person or entity shall sell or distribute *blunt wraps* in Watertown.

8) **Prohibition of the Sale of Tobacco Products by Health Care Institutions:** No *health care institution* located in *Town* shall sell or cause to be sold *tobacco products* as defined herein. No retail establishment that operates or has a *health care institution* within it, such as a pharmacy or drug store, shall sell or cause to be sold *tobacco products* as defined herein.

9) **Prohibition of the Sale of Tobacco Products by Educational Institutions:** No *educational institution* located in *Town* 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*.

10) **Liquid Nicotine Containers:** All retailers must comply with 940 CMR 21.05 which reads: “It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C.§§1471 through 1476 and 16 CFR §1700 et. Seq.”

11) **Incorporation of Attorney General Regulation 940 CMR 21.00:** The sale or distribution of *tobacco products*, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”). Notwithstanding the previous sentence, to the extent this Regulation is more restrictive than the provisions of 940 CMR 21.00 et seq., this Regulation shall control to the extent of any inconsistency with the provisions of 940 CMR 21.00 et seq.

J. Cigar Sales Regulated

1. No person shall sell or distribute or cause to be sold or distributed a single *cigar* unless such *cigar* is priced for retail sale at two dollars and fifty cents (\$2.50) or more.

2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more *cigars*, unless such package is priced for retail sale at five dollars (\$5.00) or more.

3. This Section shall not apply to 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 Watertown.

4. The Watertown 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.

K. Violations and Enforcement

1) **Responsibility for Compliance:** It shall be the responsibility of the *establishment*, owner, *permit holder* and/or his or her *business agent* to ensure compliance with all sections of this regulation.

2) **Non-Criminal Disposition:** Any person who violates the terms of this Regulation may be subject to a fine under the non-criminal disposition Ordinance authorized by M.G.L., Chapter 40, Section 21D and

the Town Ordinance 0-91-031, 0-92-032 and 0-94-40. Each violation and each day of non-compliance shall constitute a separate offense.

Fines: Any Permit Holder found to have violated this Regulation shall be assessed:

- a) \$100 for the first offense
- b) \$200 for a second offense within 24 months of the date of the previous offense, including permit suspension for seven (7) consecutive business days.
- c) \$300 for three violations within a 24 month period, including permit suspension for thirty (30) consecutive business days.
- d) \$300 for a fourth or subsequent violation occurring within a 24 month period, including permit suspension for thirty (30) consecutive business days OR permit revocation.

3) **Enforcement:** Enforcement of this Regulation shall be by the *Board* or its designated agent(s). Any citizen who desires to register a complaint pursuant to the Regulation may do so by contacting the *Board* or its designated agent(s) and an investigation will be done.

4) **Additional Remedies:** In the alternative, or in addition to the above, this Regulation may be enforced through any other means available at law as deemed appropriate by the *Board*, including, but not limited to civil enforcement for injunctive relief, and/or the suspension or revocation of any current permits and/or licenses issued by the *Board* in accordance with applicable law.

5) **Cooperation with Inspections:** 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.

6) **Sale or Distribution During Suspension or After Revocation of Permit:** 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 or revoked shall be subject to the suspension of all *Board* issued permits for up to thirty (30) consecutive business days and shall be subject to a fine of three hundred dollars (\$300) for each day that a sale occurs.

7) **Hearings:** The *Board* shall provide notice of the intent to suspend or revoke a *Tobacco Product Sales Permit*, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The *permit holder* or his/her *business agent* shall have an opportunity to be heard at such hearing and shall be notified of the *Board's* decision and the reasons therefore in writing. After a hearing, the *Board* may suspend or revoke the *Tobacco Product Sales Permit*, if the *Board* finds that a sale to a person under the *MLSA* of twenty-one (21) years of age occurred or if multiple violations occurred as set forth above. For the purpose of a suspension, 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.

8) **Removal of Products:** If a permit is suspended, all *tobacco products* shall be removed from the retail *establishment* or be placed in boxes that are sealed and moved out of the public area of the establishment

to a separate room that is accessible only to *employees*. All *tobacco products* shall be removed from the retail *establishment* upon revocation of a permit. Failure to remove all *tobacco products* shall constitute a separate violation of this Regulation.

L. 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.

M. Effective Date

This Regulation is an updated and combined regulation superseding the 2003 "Smoking in the Workplace" and the 2012 "Restricting the Sale of Tobacco Products & Nicotine Delivery Products," and shall become effective on December 1, 2017.

FOOTNOTES

[1] See fn. 7.

[2] 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.

[3] 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.nebi.nim.gov/pubmed/21809109.

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

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