



TOWN OF MANSFIELD, MASSACHUSETTS
Six Park Row, Mansfield, MA 02048

**REGULATION AFFECTING SMOKING AND THE SALE, VENDING AND
DISTRIBUTION OF TOBACCO AND NICOTINE DELIVERY PRODUCTS**

RATIONALE:

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 the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence⁴;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁵;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke⁶;

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent⁷;

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 (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/.

³ 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>.

⁴ *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁵ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

⁷ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

Whereas 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 lives⁸;

Whereas 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 youth⁹;

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%¹⁰;

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year old’s who smoked cigars reported smoking cigar brands that were flavored¹¹;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking¹²;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹³ largely because these flavored products were marketed to youth and young adults,¹⁴ and younger smokers were more likely to have tried these products than older smokers¹⁵, neither federal nor Massachusetts laws restrict sales of

⁸ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

¹⁰ 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.

¹¹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

¹² 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.

¹³ 21 U.S.C. § 387g.

¹⁴ 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.

¹⁵ 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

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 addiction¹⁶;

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale¹⁷;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation¹⁸;

Whereas menthol makes it easier for youth to initiate tobacco use¹⁹;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers in one year²⁰;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”²¹;

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 one²²;

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 was 10.8% in 2013²³;

Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ 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.

¹⁷ See fn. 3 at p. 85.

¹⁸ www.fda.gov/downloads/ucm361598.pdf, <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

¹⁹ www.tobaccofreekids.org/assets/factsheet/0390.pdf

²⁰ MA YRBS 2017

²¹ 310 CMR 30.136

²² 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>.

²³ See fn. 7.

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 cigarettes²⁴;

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; and

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”²⁵.

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

ARTICLE 1. AUTHORITY

The Mansfield Board of Health, pursuant to the authority granted under the Massachusetts General Laws (M.G.L.), Chapter 111, Section 31, hereby adopts the following regulation.

ARTICLE 2. DEFINITIONS

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

Adult-Only Retail Tobacco Store (smoke shop, tobacconist, vape shop): An establishment that does not share space with another business, that has a separate entrance, that does not sell food or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Mansfield Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment. As of the effective date of this regulation, no new adult-only retail tobacco stores shall be located within 50 feet of a retailer with a tobacco and nicotine delivery product sales permit.

²⁴ 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.

²⁵ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

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.

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.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint or wintergreen, 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.

Coupon: Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

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.

Flavored Tobacco Product Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any vapor product or tobacco product as defined below.

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.

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 opened by the consumer or retailer.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

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 and nicotine delivery product sales permit or any person who is required to apply for a Tobacco and Nicotine Delivery 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.

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, 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.

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.

ARTICLE 3. SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS

Section 1. Retail Sales

A. Minimum Legal Sales Age.

No person shall sell or provide a tobacco or nicotine delivery products in any of its forms to any person under the minimum legal sales age. The minimum legal sales age in Mansfield is 21.

B. Required signage.

Store managers where tobacco and nicotine delivery products in any of its forms are sold shall conspicuously post and maintain signs where tobacco and nicotine products are displayed and at all checkout counters notifying customers that proof of age is required to purchase tobacco products. Such signage will be available from the Board of Health.

1. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05 (2) (e).
2. 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 Board of Health that discloses current referral information about smoking cessation.
3. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as "Tobacco Products", at retail shall conspicuously post a sign stating that "The sale of nicotine delivery products, which includes e-cigarettes, to a person under 21 years of age is prohibited." The notices shall be no smaller than 8.5" by 11" and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices 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.

C. Identification.

1. No retailer may sell tobacco and nicotine products to any person younger than twenty-one (21) years of age. Each retailer shall verify by means of valid government issued photographic identification containing the bearer's date of birth that no person purchasing the product is younger than twenty-one (21) years of age. Verification is required for any person under the age of twenty-seven (27).
2. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer. Examples of methods of sale which are not permitted include, but are not limited to, vending machines and self-service displays.

D. Statement of Review.

No person, firm, corporation, establishment or agency selling tobacco and nicotine products in any of its forms shall allow anyone to sell or distribute tobacco and nicotine products, in any of its forms, until the employee has read the applicable Board of Health regulations and state and federal laws. Said person shall sign a statement, supplied by the Board of Health and kept on file at the establishment, that the employee understands and will uphold the regulations. Statements shall be subject to review by the Board.

Section 2. Free Distribution and Coupon Redemption

No person shall:

- A. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
- B. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
- C. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

Section 3. Out of Package Sales

- A. 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.
- B. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."
- C. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

Section 4. Self-service Displays

All self-service displays of tobacco and/or nicotine delivery products as defined herein are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

Section 5. Vending Machines

The sale or dispensing of tobacco and/or nicotine delivery products through vending machines is prohibited.

Section 6. Non-Residential Roll-Your-Own Machines

All Non-Residential Roll-Your-Own machines are prohibited.

Section 7. Sale of Blunt Wraps

No person or entity shall sell or distribute blunt wraps in Mansfield with the exception of Adult-Only Retail Tobacco Stores.

Section 8. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions

No health care institution located in Mansfield 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.

Section 9. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions

No educational institution located in the town of Mansfield 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.

Section 10. Cigar Sales Regulated

- A. 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.
- B. 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.
- C. 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 Mansfield.

- D. The Mansfield Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

Section 11. Sale of Flavored Tobacco and Nicotine Delivery Products Prohibited

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

Section 12. Tobacco and Nicotine Delivery Products Sale Instruction

No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco and/or nicotine delivery products until such employee has received instruction in tobacco and/or nicotine delivery product sales regarding federal, state and local laws and signs a statement, a copy of which will be placed on file, at the location of named on the Tobacco and Nicotine Delivery Product Sales Permit that employee has received the required instruction.

Section 13. Permit Display

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

ARTICLE 4. PERMIT FOR SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS

Section 1. Permit for Location and Sale of Tobacco and Nicotine Delivery Products

- A. No person or firm shall engage in the sale of tobacco and nicotine delivery products without holding a valid "Permit for Location and Sale of Tobacco and Nicotine Delivery Products".
- B. Only a person who complies with the requirements of this regulation shall be entitled to receive and retain a permit. The Board of Health may suspend or revoke the permit for cause.
- C. The permit shall be valid from the date of issuance and shall expire on the last day of the year of the date of issuance unless revoked sooner by the Board.
- D. A permit shall not be transferable from a person or place with the exception of a retailer changing location. 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.
- E. A permit shall only be issued to a business in a permanent building.

- F. 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 and Nicotine Delivery Product Sales Permit can be issued.
- G. The applicant is required to sign a statement declaring that the applicant has read the 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. Signing a false statement may be reason for suspension or revocation of the permit.
- H. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Mansfield Board of Health annually.
- I. A separate permit is required for each retail establishment selling tobacco or nicotine delivery products.
- J. Issuance of a Tobacco and Nicotine Delivery 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.
- K. A Tobacco and Nicotine Delivery 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.
- L. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
- M. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the minimum legal sales age three (3) times within the previous permit year and the time period to appeal has expired. The permit holder may request a hearing in accordance with Article 6, Section 4 of this regulation.
- N. When considering the issuance, including renewal, of a Tobacco and Nicotine Delivery Product Sales Permit, the Board of Health may consider all of violations in granting the permit.

Section 2. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits.

- A. At any given time, there shall be no more than twenty-three (23) Tobacco and Nicotine Delivery Product Sales Permits issued in the town of Mansfield. 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 as a first-time permit applicant. 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, revoked, or are returned to the Board of Health.

- B. A Tobacco and Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (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.
- C. Applicants who purchase or acquire an existing business that holds a valid Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein.

Section 3. Application for Permit

Any person desiring to sell tobacco products shall make written application for a permit on a form provided by the Board of Health. The application shall include:

- A. The applicant's name; the owner's name if different from the applicant; the applicant's post office address; whether such an applicant is an individual, partnership, or corporation, and if a partnership or corporation, the names of the partners or corporate officers together with their home addresses, state of incorporation, and the name and address of the local agent;
- B. The name and location of the establishment;
- C. The provider, type and frequency of review of tobacco and nicotine delivery products sales training.
- D. The signature of the applicant or applicants.

ARTICLE 5. INCORPORATION OF STATE LAWS AND STATE REGULATIONS

Section 1.

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§6, 6A, 7 and M.G.L. Ch. 112, §61A.

Section 2.

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") and 940 CMR 22.00 ("Sale and Distribution of Cigars in Massachusetts").

ARTICLE 6. VIOLATIONS

Section 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 of this regulation, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit be suspended for up to seven (7) consecutive business days.
- B. In the case of a second violation of this regulation within a thirty-six (36) month period of the date of the previous violation, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit be suspended for up to sixty (60) consecutive business days.
- C. In the case of three or more violations within a thirty-six (36) month period of the date of the previous violation or repeated, egregious violations of this regulation, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit be suspended for up to ninety (90) consecutive business days. The Board of Health may alternately revoke the Tobacco and Nicotine Delivery Product Sales Permit.
- D. All violators will be requested to appear before the Board of Health to discuss the conditions under which the violation occurred and what has been done to prevent reoccurrence. Failure to appear before the Board of Health may result in suspension of the permit after notice and opportunity to be heard.

Section 2. Suspension of Permit

- A. The Board of Health or its agent may, after providing opportunity for hearing, suspend the permit for location and sale of tobacco and nicotine delivery products.
- B. The Board of Health or its agent shall give notice of the violation and hearing to the permit holder in writing.
- C. The notice shall specify the specific violations for which the permit is to be suspended and that after providing opportunity for a hearing, the permit shall be suspended if the Board of Health finds that the violation occurred.
- D. If no request for hearing is filed within the seven (7) day period, the suspension shall be imposed.
- E. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

Section 3. Revocation

- A. The Board of Health or its agent may, after providing opportunity for a hearing, order the revocation of a permit for:
 - 1. Serious or repeated violations of the requirements of this regulation;
 - 2. Interference with the Board of Health in the performance of its duty;
 - 3. Keeping or submitting and misleading or false records or documents required by these regulations.
- B. The Board of Health or its agent shall give notice of the violation and the opportunity for a hearing to the permit holder in writing.
- C. The notice shall specify the specific reason(s) for which the permit is to be revoked and that the permit shall be revoked at the end of seven (7) days following service of such notice, if the Board of Health finds that a violation occurred unless a written request for hearing is filed with the Board of Health by the permit holder within such seven (7) day period.
- D. If no request for hearing is filed within the seven (7) day period and the Board of Health finds that a violation occurred, the revocation shall be imposed.

Section 4. Hearing

- A. The person or persons to whom any notice has been issued may request a hearing before the Board of Health. Such request shall be made in writing and shall be filed in the office of the Board of Health within seven (7) days after receipt of the notice.
- B. Upon receipt of such request the Board of Health shall set a time and place for such hearing and shall inform the petitioner thereof in writing.
- C. The hearing shall be commenced not later than fourteen (14) days after the day on which the request was filed. However, upon application of the petitioner the Board of Health may postpone the date of the hearing for a reasonable time beyond such fourteen (14) day period if in the judgment of the Board of Health the petitioner has submitted a good and sufficient reason for such postponement.
- D. At the hearing the petitioner shall be given an opportunity to be heard and to show why the notice should be modified or withdrawn. Any oral testimony given at the hearing shall be recorded verbatim.
- E. After the hearing, the Board of Health shall make a final decision based upon the complete hearing record, and shall inform the petitioner in writing of the decision. If the

board of health sustains or modifies the notice, it shall be carried out within the time period allotted in the original notice or in the modification.

- F. Any person aggrieved by the final decision of the Board of Health may seek relief in a court of competent jurisdiction in the Commonwealth.

Section 5. Tobacco and Nicotine Delivery Product Sales When Suspended

In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco and nicotine delivery products while the permit is suspended shall be subject to the revocation of the tobacco products sales permit after notice and opportunity to be heard.

Section 6. Tobacco and Nicotine Product Removal upon Suspension or Revocation

- A. When a permit has been suspended, the holder of the permit shall, in the presence of a representative from the Board of Health, inventory all tobacco and nicotine delivery products for sale on the premises, package and seal the package.
- B. When the suspension has been fulfilled, the holder of the permit shall, in the presence of a representative from the Board of Health, inventory all tobacco and nicotine delivery products prior to restocking.
- C. Failure to remove all tobacco and nicotine delivery products during a permit suspension shall constitute a separate violation of this regulation.
- D. When a permit has been revoked, the permit holder shall remove all tobacco and nicotine delivery products from the premises within twenty-four (24) hours. No tobacco and nicotine delivery products for sale shall be on the premises unless a valid permit has been issued

ARTICLE 7. 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.

ARTICLE 8. ENFORCEMENT

Section 1.

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

Section 2.

Anyone wishing to register a complaint pursuant to the regulation may do so by contacting the Mansfield Board of Health or its designated agent(s) in writing, naming the alleged violation, location, date and time of the violation and the Board shall investigate.

ARTICLE 9: SEVERABILITY

Each article and section of this regulation shall be construed as separate to the end that if any section or sentence, clause, or phrase thereof shall be held invalid for any reason, the remainder of that section shall continue in full force.

ARTICLE 10: EFFECTIVE DATE

This regulation shall take effect June 1, 2020

By MANSFIELD BOARD OF HEALTH

Michael W. Healey	<u><i>Michael W. Healey</i></u>
Kasia Frenette	<u><i>Kasia Frenette</i></u>
Antonia Blinn	<u><i>Antonia Blinn</i></u>
Leah Gillespie	<u><i>Leah Gillespie</i></u>
Graham Wilson	<u><i>Graham Wilson</i></u>

A TRUE COPY
ATTEST:

