

## Regulation of the Stoughton Board of Health Restricting the Sale of Tobacco Products and Smoke Accessories

### A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat<sup>1</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence.<sup>4</sup>

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers "spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive" and that these companies were likely to continue targeting underage smokers<sup>5</sup>;

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 smoke;<sup>6</sup>

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 percent ;<sup>7</sup>

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 lives<sup>8</sup>.

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 youth<sup>9</sup>;

Whereas the 2019 Stoughton High Youth Health Survey results show that 1.3% of Stoughton High School students had smoked cigars, cigarillos or little cigars on at least one day of the 30 days prior to the survey, compared with 11.7% in 2011.<sup>10</sup>

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<sup>1</sup> 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](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> 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/sgy/2010/](http://www.cdc.gov/tobacco/data_statistics/sgy/2010/).

<sup>3</sup> 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>.

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

<sup>5</sup> *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 330 I and Pp. 1605-07.

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

<sup>7</sup> CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014; 63 (No SS-04)). Retrieved from: [www.cdc.gov](http://www.cdc.gov).

<sup>8</sup> 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.

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

Whereas the February 2020 Stoughton Youth Health Survey, 29% of Stoughton High School students reported that they had ever used e-cigarettes during their lifetime which represents a 44% increase since 2017 (27%). 10% of O'Donnell Middle School students reported using electronic cigarettes during their lifetime.<sup>10</sup>

Whereas the 2019 Stoughton Youth Health Survey 43% of Stoughton High Students report using electronic cigarettes / vaping during their lifetime. This number has increased 59% (from 27%) since 2017. In 2019, 6% of SHS students report ever using cigarettes.<sup>10</sup>

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%<sup>11</sup>;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;<sup>12</sup>

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;<sup>13</sup>

Whereas the U.S. Centers for Disease Control and Prevention has reported that the considerable increase in e-cigarette use among U.S. youths, coupled with no change in use of other tobacco products during 2017-2018, has erased recent progress in reducing overall tobacco product use among youths;<sup>14</sup>

Whereas 20% of Massachusetts high school youth currently use-cigarettes and 41% have tried them;<sup>15</sup>

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,<sup>14</sup> largely because these flavored products were marketed to youth and young adults,<sup>15</sup> and younger smokers were more likely to have tried these products than older smokers<sup>16</sup> 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;

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<sup>10</sup> Stoughton 2011, 2017, 2019 & 2020 Youth Risk Behavior Survey.

<sup>11</sup> 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.gov/pubmed/21809109](http://www.ncbi.nlm.gov/pubmed/21809109).

<sup>12</sup> 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](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>13</sup> See fn. 3 at p. 85.

<sup>14</sup> 21 U.S.C. § 387g.

<sup>15</sup> 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](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>16</sup> 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](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction;<sup>17</sup>

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 one<sup>18</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 is 10.8% in 2013;<sup>19</sup>

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

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

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"<sup>20</sup>.

Now, therefore it is the intention of the Stoughton Board of Health to regulate the sale of Tobacco Products and Smoke Accessories.

#### **B. Authority:**

This regulation is promulgated pursuant to the authority granted to the Stoughton Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations". Reference is also made to M.G.L. c. 64, §§ 1, 10; M.G.L. c. 94G; M.G.L. c. 94, § 307C and the Attorney General's regulations promulgated as 940 CMR 21.00-21.07, 22.00-22.07; M.G.L. c. 112 and the regulations of the Department of Public Health as 247 CMR 6.00; and M.G.L. c. 270, §§ 6-7; 22; 27.

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<sup>17</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://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](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf)

<sup>18</sup> 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>.

<sup>19</sup> See fn. 7.

<sup>20</sup> *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

### **C. Definitions:**

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

Adult-Only Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, Tobacco Products and smoke accessories, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the Minimum Legal Sales Age is prohibited at all times, and which maintains a valid Tobacco Product Sales Permit for the retail sale of Tobacco Products and Smoke Accessories as required by the Stoughton Board of Health.

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 menthol, mint, or wintergreen, 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.

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

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in such kits or roll-your-own packages shall be considered “blunt wraps” for the purpose of this regulation.

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 issue 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.

Enforcement Authority: The primary enforcement authority shall be the Stoughton Board of Health. The alternate enforcement authority shall be the Stoughton Police Department.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

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.

Marijuana Accessories: Equipment, products, devices, or materials of any kind that are intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana into the human body.

Marijuana Retailer: "Marijuana Retailer" as defined in 935 CMR 500.002.

Minimum Legal Sales Age CMLSA: The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

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

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and smoke accessories, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Stoughton Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Accessories: Equipment, products, devices, or materials of any kind that are intended or designed for use in ingesting, inhaling, or otherwise introducing Tobacco Product, marijuana, tetrahydrocannabinol (THC), or cannabidiol (CBD) into the human body, including, but not limited to, Marijuana Accessories, rolling papers, bongs, pipes, glass pipes, vaporizers (for use other than nicotine products), vape pens (for use other than nicotine products), hookah apparatus, dab rigs, pods, tanks, and cartridges.

Smoke Constituent: Any chemical or chemical compound in mainstream or side stream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar:

- (1) exclusively occupies an enclosed indoor space and is primarily engaged in retail sale of tobacco products for consumption by customers on the premises only;
- (2) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person younger than 21 years old;
- (3) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises;
- (4) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth in which the establishment is located; and
- (5) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

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.

Tobacco Product Sales Permit: A permit issued by the Stoughton Board of Health for selling or otherwise distributing Tobacco Products in the Town of Stoughton.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

**D. Applicability:**

1. A holder of a valid Tobacco Product Sales Permit, as defined herein, that also possesses a retail food permit and not adult-only may sell Tobacco Products without Characterizing Flavor, vape products with a nicotine content at or below 35 mg/ml but may not sell smoke accessories or Flavored Tobacco Products.
2. Adult-Only Retail Tobacco Stores, as defined herein, may sell Tobacco Products, Tobacco Products without Characterizing Flavor, vape products of any nicotine content and Smoke Accessories.

**E. Tobacco Sales to Persons Under Twenty-One (21) year Old:**

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.
2. Required Signage:
  - a. All retail establishments, including adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) except in the case of smoking bars, notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.
  - b. All adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."
3. Identification: Each person selling or distributing tobacco products, or admitting entrance into an adult-only retail tobacco store, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for all persons purchasing tobacco products.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

**F. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Stoughton without first obtaining a Tobacco Product Sales Permit issued annually by the Stoughton Board of Health. Only owners of establishments with a permanent, non-mobile location in Stoughton are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Stoughton.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Regulation of the Stoughton Board of Health Restricting the Sale of Tobacco Products and Smoke Accessories (this regulation). Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as

defined herein. The fee for which shall be determined by the Stoughton Board of Health annually.

5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

6. As of the effective date of this regulation, no new adult-only retail tobacco stores shall be located within twenty-five (25) feet of an existing retailer with a tobacco product sales permit. No single retail establishment shall have more than one Tobacco Product Sales Permit.

7. 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.

8. 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 the permit holder has not satisfied any outstanding permit suspensions.

9. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a Tobacco Product to a person under the MLSA (§F.1) three times within the previous 24 months and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.

10. Maximum Number of Tobacco Product Sales Permits.

- a. At any given time, there shall be no more than **30** Tobacco Product Sales Permits issued in Stoughton. 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.
- b. At any given time, of the allowed Permit number in subsection (a) above, there shall be no more than **4** Tobacco Products Sales Permits issued to Adult-Only Retail Tobacco Stores, per the definition, in Stoughton. 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.
- c. As of January 1, 2020, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Stoughton Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraphs (a) and (b) shall be reduced by the number of the retired permits.
- d. A Tobacco 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.
- e. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.
- f. Applicants who purchase or acquire an existing business that holds a valid Tobacco 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. Such applicant may choose to apply for a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store if the Current Permit Holder possessed the same or if a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store is available per subsection (b).

**G Prohibition of Smoking Bars:**

Smoking Bars are prohibited in the Town of Stoughton.

**H. 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 ninety cents (\$2.90) 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 and eighty cents (\$5.80) or more.
3. This Section shall not apply to:
  - a. 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 Stoughton.
  - b. Retail tobacco stores
4. The Stoughton 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.

**I. Prohibition of the Sale of Blunt Wraps:**

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

**J. Free Distribution and Coupon Redemption:** No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. 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
3. 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.

**K. Out-of-Package Sales:**

1. 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.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000,

and must provide the Stoughton Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.

3. 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."
4. 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.

**L. Self-Service Displays:**

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

**M. Vending Machines:**

All vending machines containing tobacco products, as defined herein, are prohibited.

**N. Non-Residential Roll-Your-Own Machines:**

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

**O. Prohibition of the Sale of Tobacco Products by Health Care Institutions:**

No health care institution located in Stoughton 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. This section shall not apply to a retail establishment, which applies for and obtains an exemption from this section, provided that no exemption shall be granted unless the retail establishment: (1) is a membership warehouse club; (2) sells memberships only to persons eighteen years of age or older; and (3) provides only eye care and/or hearing care services to its memberships.

**P. Prohibition of the Sale of Tobacco Products by Educational Institutions:**

No educational institution located in Stoughton 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.

**Q. Sale of Flavored Tobacco Products Prohibited:**

No person shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010).

**R. Violations:**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. For violations of this regulation the following penalties apply:

- a. In the case of a first violation, a fine of one thousand dollars (\$1000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 040(d), for three (3) consecutive business days.
  - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
2. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
  3. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
  4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
  5. The Stoughton Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Stoughton Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
  6. For purposes of such fines, the Board of Health 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.

**S. 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 where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.

**T. Separate Violations:**

Each day any violation exists shall be deemed to be a separate offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

**U. Enforcement:**

Primary enforcement of this regulation shall be by the Stoughton Board of Health or its designated agent(s). 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. Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Stoughton Board of Health or its designated agent(s) and the Board shall investigate. In cases where any enforcement action that is taken, implemented or initiated by the Stoughton Police Department, the Chief of Police or his designee shall notify the primary enforcement agent within 5 business days.

**V. 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.

**W. Effective Date:**

**This regulation shall take effect on \_\_\_\_\_**

Regulation voted 6/17/14 by the Stoughton Board of Health. A Public hearing was held on April I, 2014. Promulgation was advertised in the Stoughton Journal, March 14 and March 21, 2014

Amendment voted 8/13/15 by the Stoughton Board of Health. A public hearing was held on August 13, 2015. Promulgation was advertised in the Stoughton Journal, July 24 and July 31, 2015

Amendment voted 6/9/16 by the Stoughton Board of Health. A Public Hearing was held on June 9, 2016. Promulgation was advertised in the Stoughton Journal May 20 and May 27, 2016.

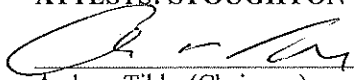
Amendment voted 12/6/18 by the Stoughton Board of Health. A Public Hearing was held on October II, 2018. Promulgation was advertised in the Stoughton Journal September 28 and October 5, 2018

Amendment voted 9/12/19 by the Stoughton Board of Health. A Public Hearing was held on August I, 2019. Promulgation was advertised in the Stoughton Journal July 10 and July 17, 2019

**ATTESTATION**

*The regulation described herein and attached hereto is a true copy of the regulation adopted by the Stoughton Board of Health*

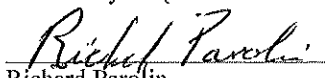
**ATTESTS: STOUGHTON BOARD OF HEALTH**

  
\_\_\_\_\_  
Andrew Tibbs (Chairman)

5/19/22  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Steven Snyder (Vice Chairman)

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Richard Parolin

5/19/22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ellen Epro

5/19/22  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Varner

\_\_\_\_\_  
Date