

CITY OF MARLBOROUGH

BOARD OF HEALTH POSTING

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CITY OF MARLBOROUGH

Meeting Name: Marlborough Board of Health

Date: January 6, 2015

2014 DEC 30 P 3:08

Time: 6:30 PM

Location: City Hall, 3rd Floor, Memorial Hall

Agenda Items to be addressed:

New Business:

- | | |
|---|---------|
| 1. Review December 2, 2014 BOH Minutes | 6:30 PM |
| 2. Tobacco Regulation Update | 6:45 PM |
| 3. Sully's First Edition Pub (Hearing) | 7:45 PM |
| 4. Sisters of St. Anne's (Variance Request) | 8:15 PM |
| 5. Prospector (Status Report) | 8:30 PM |
| 6. Fee Schedule | 8:45 PM |
| 7. DPW YOP | 9:00 PM |
| 8. Health Inspector Report | 9:10 PM |
| 9. Public Health Nurse Report | 9:15 PM |
| 10. Director's Report | 9:20 PM |

Old Business

11. Status of Assistant Sanitarian Position

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

Marlborough Board of Health Meeting Minutes December 2, 2014
City Hall, 3rd Floor, Memorial Hall

CALL TO ORDER: James Griffin, Chairman call the meeting to order at 6:35

PRESENT: James Griffin, Chairman (JG); John Curran, M.D., Vice Chair (JC); Robin Williams, Member (RW); Sam Wong, Hudson Public Health Director; Steven Ward Interim Public Health Director; Bob Landry, Sanitarian; Nancy Cleary, Public Health Nurse; Tina Nolin, Senior Clerk.

Administrative:

1: Minutes Review: The board reviewed the minutes of the November 5, 2014 meeting. RW made a motion to approve the minutes of the November 5 meeting and place on file. JC seconded. Motion carried 3-0

New Business:

2A: Continued discussion of Draft Tobacco Control Regulations

DJ Wilson, Tobacco Control from Boston, presented current Tobacco Policies available to municipalities. Policies fall under two regulations: 1) Restricting the Sale of Tobacco Products and 2) Prohibition of Smoking in Workplaces and Public Places.

Board expressed consensus to move forward with steps towards the adoption of both regulations. Steve Ward suggested considering the public hearing be extended to the February 3, 2015 meeting, rather than the January 6, 2015 meeting and using the longer lead time to formally inform stakeholders (schools, police, parks and recreation, healthcare facilities and pharmacies, etc.) and draft the regulations for the public. Feedback on the planning/marketing rollout could be given at the January 6, 2015. There was consensus among the Board to extend Public meeting until February 3rd meeting.

2B: Ebola Update

Sam Wong updated Board on the Marlborough Hospital meeting that he, Steve Ward and Nancy Cleary attended. Clinical aspects of preparedness: hospitals, ambulances etc. and Board of Health's role centering mainly on quarantine and isolation orders dominated the meeting.

2C: Discussion of Fee Schedule

In light of the number of establishments requiring multiple inspections to reach compliance, Steve Ward introduced adding a surcharge to the current fee schedule to cover these costs. A \$75 fee was suggested. The directive would be that the permit would not be renewed until surcharge payment had been received. Introduction of the fee would be direct and explicit in the Order Letter sent to an establishment. There was a brief discussion of overhauling the entire fee schedule but Steve said this should be handled at a later date. A draft amendment to the current fee schedule announcing the new surcharge fee for each repeated inspection due to violations will be presented at the January 6, 2015 meeting. Board expressed consensus on all points.

2D: Sully's First Edition Pub

Richard Sullivan of Sully's First Edition Pub appeared before the Board for multiple and repeat violations of the 1999 Food Code as determined in recent food inspections. Maureen Lee, current Food Consultant for the City presented her inspection findings, showing a lack of progress on significant violations, while acknowledging progress has been made in other compliance areas.

Steve Ward presented for the Board's consideration the recommendations of the Health Department, including time table, which was read into the public record. Due to Mr. Sullivan's difficulty hearing, Sam Wong gave him the recommendation document to read and went over it with him. Mr. Sullivan confirmed he understood what was being required and that non-compliance on any point could lead to suspension of his permit. Mr. Sullivan was given a copy of the recommendation document.

RW motioned to accept the written recommendation document/letter and read into the public record with the addition of requiring the education of staff in correct kitchen/food safety. JC seconded the motion. Motioned carried 3-0.

2D: Safety Clean looking for Guidance concerning amending the 1981 site assignment to include handling medical waste

Steve Ward reported that at this time he did not have any new information to report as he had not heard any further information from the individual representing Safety Clean.

Old Business

3: Master Wok update

Steve Ward reported that that the consultant for Master Wok was submitting the updates the Board asked for, but that they were somewhat too general in nature. Mr. Ward was unable to get a sense of true changes in the sanitary practice and general sanitary environment of the food establishment. He suggested that the Department may need to conduct an inspection via an independent consultant.

Additional Business: Informational Purposes Only

From the Interim Administrator/Supervisor:

- 1) Introduction of the significant need for future changes to large Temporary Food Events. Currently not enough structure and need to develop SOPs and brought to Board.
- 2) Continuing food violations at The Prospector East Saloon were discussed. Steve Ward presented Mr. Robert Kays', owner of the establishment, Extension Letter regarding the installation of a required hand sink. The letter was accepted and Steve reported the Health Department would send a letter to Mr. Kays stipulating a date for which the sink needed to be in, with failure to do so resulting in an appearance before the Board. Board expressed consensus on all points.

- 3) Report on various changes in practices at the Health Department, e.g., time logs and project spreadsheets that would enable accurate determination of long term staffing needs. Additionally, the board was updated regarding possible consultants to assist in administrative/program development.
- 4) Board apprised of the Departments search for an Assistant Sanitarian.

Next Monthly meeting scheduled for Tuesday, January 6, 2015 – 6:30 pm

Public Hearing for Tobacco Regulations Tuesday, February 3, 2015 – 6:30 pm

Motion made to adjourn: 9:03 (Motion carried 3-0)

Respectfully submitted,

James Griffin, Chairman



CITY OF MARLBOROUGH

BOARD OF HEALTH

140 Main Street, Lower Level
Marlborough, Massachusetts 01752
Facsimile (508) 460-3625 TDD (508) 460-3610

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

December 15, 2014

Dear Community Stakeholder,

Re: **Proposed Tobacco Control Regulations**

The Marlborough Board of Health is entertaining the adoption of the following tobacco related regulations:

“City of Marlborough Regulation Prohibiting Smoking in Workplaces and Public Places”,
and:

“Regulation of the Marlborough Board of Health Restricting the Sale of Tobacco Products”

As a valued community stakeholder the Board of Health is soliciting your review and comments on these proposed regulations. “Attached please find the “Tobacco Policies Available to Municipalities – 2014” document that outlines the important policy proposals contained in each of these regulations. Please feel free to submit verbal and/or or written testimony on either or both proposed regulations to the Board of Health. The Board of Health anticipates that a public hearing will be held at their February 3, 2015 Board of Health meeting to consider the adoption of these regulations. I look forward to contacting you in the near future to discuss these proposed regulations.

In the interim should you have any questions concerning this matter please feel free to contact this office at 508-460-3751.

Sincerely,

Steven J. Ward, MPH, CHO
Interim Director of Public Health

CC: File



CITY OF MARLBOROUGH

BOARD OF HEALTH
140 Main Street, Lower Level
Marlborough, Massachusetts 01752
Facsimile (508) 460-3625 TDD (508) 460-3610

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

December 29, 2014

Dear Community Stakeholder,

Re: **Proposed Tobacco Control Regulations**

The Marlborough Board of Health is entertaining the adoption of the following tobacco related regulations:

"City of Marlborough Regulation Prohibiting Smoking in Workplaces and Public Places",
and:
"Regulation of the Marlborough Board of Health Restricting the Sale of Tobacco Products"

As a valued community stakeholder the Board of Health is soliciting your review and comments on these proposed regulations. "Attached please find the "Tobacco Policies Available to Municipalities – 2014" document that outlines the important policy proposals contained in each of these regulations. Please feel free to submit verbal and/or or written testimony on either or both proposed regulations to the Board of Health. The Board of Health anticipates that a public hearing will be held at their February 3, 2015 Board of Health meeting to consider the adoption of these regulations. I look forward to contacting you in the near future to discuss these proposed regulations.

In the interim should you have any questions concerning this matter please feel free to contact this office at 508-460-3751.

Sincerely,

Steven J. Ward, MPH, CHO
Interim Director of Public Health

CC: File

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

SECTION 1

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

SECTION 2

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

SECTION 3

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

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

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

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

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

Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

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

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

Retail tobacco store: an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Marlborough Board of Health.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

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

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

SECTION 4: SMOKING PROHIBITED

- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
- (b) Smoking is hereby prohibited in Marlborough in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
- (c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
 - 1. Smoking Bars
 - 2. Retail Tobacco Stores
 - 3. Municipal-owned Parks, Playgrounds, Athletic Fields, Beaches
 - 4. Municipal Buildings including property under control of said buildings
 - 5. Nursing Homes
 - 6. Membership Associations
 - 7. Hotels, Motels, B&B rooms
 - 8. Public Transportation, Bus and Taxi Waiting Areas
 - 9. Outdoor Space where food and/or beverages are served to the public by employees of restaurants, bars and taverns
- (a) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

SECTION 5: ENFORCEMENT

- (1) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
 - a. \$100 for the first violation;
 - b. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
 - c. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (2) Each calendar day on which a violation occurs shall be considered a separate offense.
- (3) This regulation shall be enforced by the Board of Health and its designees.

- (4) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- (5) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- (6) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- (7) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 6: SEVERABILITY

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

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

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

SECTION 8: EFFECTIVE DATE

This regulation shall be effective as of _____, 2015.

- 1. _____
- 2. _____
- 3. _____

Regulation of the Marlborough Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

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

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

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

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

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

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

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

⁵ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking -- 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

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

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

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁸;

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

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

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹⁴ neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁵

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;¹⁶

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

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

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

¹¹ 21 U.S.C. § 387g.

¹² Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁴ 21 U.S.C. § 387g

¹⁵ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

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

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

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one¹⁹;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.3% in 2011²⁰;

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

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history²²;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%²³;

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

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

¹⁸ Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁹ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

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

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

²² Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/EcoHHS2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

²³ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit²⁵ and high prices deter youth from starting.²⁶ Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)²⁷;

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

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

Whereas the Massachusetts Supreme Judicial Court has held that "... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"²⁸.

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

B. Authority:

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

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

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

²⁶ Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence* 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>.

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

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

C. Definitions:

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

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

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

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

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

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

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

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

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

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

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

Schools: Public or private elementary or secondary schools.

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

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other

means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Marlborough is twenty-one (21).

2. Required Signage

- a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Marlborough Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Marlborough Board of Health that discloses current referral information about smoking cessation.
- c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

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

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the City of Marlborough without first obtaining a Tobacco Product Sales Permit issued annually by the Marlborough Board of Health. Only owners of establishments with a permanent, non-mobile location in Marlborough are eligible to apply for a permit and sell tobacco products at the specified location in Marlborough.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Marlborough regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Marlborough Board of Health annually.

5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

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

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

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

9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

11. Maximum Number of Tobacco Product Sales Permits.

At any given time, there shall be no more than thirty-eight (38) Tobacco Product Sales Permits issued in Marlborough. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated

as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed or are returned to the Board of Health.

12. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to
 - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
 - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Marlborough.
4. The Marlborough Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

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

H. Prohibition of the Sale of Blunt Wraps:

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

I. Free Distribution and Coupon Redemption:

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

J. Out-of-Package Sales:

The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

K. Self-Service Displays:

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

L. Vending Machines:

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

M. Non-Residential Roll-Your-Own Machines:

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

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

No health care institution located in Marlborough shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

O. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Marlborough shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

P. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
 - d. In the case of further violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health may revoke a Tobacco Product Sales Permit.
2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.
4. The Marlborough Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Marlborough Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

Q. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

R. Enforcement:

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

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Marlborough Board of Health or its designated agent(s) and the Board shall investigate.

S. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

T. Effective Date:

This regulation shall take effect on _____, 2015.

1. _____
2. _____
3. _____

TOBACCO POLICIES AVAILABLE TO MUNICIPALITIES - 2014

POLICY PROPOSAL	POLICY SUMMARY	PUBLIC HEALTH EFFECT	BUSINESS EFFECT	MA. MUNICIPALITIES WITH THIS POLICY
Regulate e-cigarettes the same as tobacco products (sales)	E-cigarette vendors will need a permit; cannot sell to youth; no vending machines or self-service displays.	Reduce youth nicotine addiction through e-cigarettes; penalties for retailers who sell to minors.	Will not reduce sales for those retailers who made the business decision to sell only to adults. Those who sold to minors will lose sales.	139
Cessation sign requirement (sales)	Requires permit holders to post a sign that indicates the state's toll-free Quitline for smokers who are contemplating a quit attempt.	Provides a visual reminder to smokers that the state provides telephone counseling for free.	Signage is provided free by the state to cities and towns for distribution to retailers.	76
Regulate cigar pricing and packaging (sales)	Single cigar must be sold for at least \$2.50. All cigar multipacks must be sold for at least \$5.00, regardless of price imprinted by manufacturer.	Will counter Mass. statistics showing youth using more cigars than cigarettes because they are far cheaper.	No data from retailers though Boston in effect since 2012. While drop in sales may occur, those sales will have higher profit margin. May be a "wash".	79 49 with original policy (no 4+ pack min. price set) 30 with this proposed policy (min. price set for all cigars)
Capping the number of Tobacco Sales Permits issued (sales)	Limits the number of permits to be issued at any one time. When the cap is reached, a waiting list is to be established.	Stabilizes density much the same way liquor licensing schemes do. Makes current permits more "valuable", resulting in better compliance from finite retailer pool.	Does not interfere with either current permit holders or the buyers of a business with a valid permit.	41 NOTE: Some of these municipalities have language that reduces permit numbers over time.
Ban flavored tobacco and e-cigarette products except in certain locations (mimics federal court-approved Providence ordinance). Note that menthol/mint is NOT a flavor per US FDA. (sales)	Expands 2009 federal ban on the sale of flavored cigarettes to all other tobacco products and e-cigarette nicotine solutions except in adult-only retail tobacco stores/vape stores/hookah and cigar bars.	Honors the rationale behind the federal flavored cigarette ban by extending it to kid-friendly flavored products but still allows the sale of such items in adult-only establishments.	The exempted businesses will be able to sell all flavors but will have to bar entry and sales by youth. All other vendors will be able to still sell plain tobacco flavor and menthol/mint flavors.	9 (and Providence, RI) Mass. municipalities were deterred from enacting policy until Providence fed. court case was decided in February 2014.
Raise the Minimum Legal Sales Age (MLSA) from 18 to 21 (sales)	"The minimum legal sales age in Lawrence is 21." This includes both tobacco products and nicotine delivery products.	Eliminates "of age" high school students buying tobacco for underaged peers. Delays any smoking start by 3 years and should eliminate early teen use.	Customers aged 18, 19 and 20 will no longer be tobacco customers. No data available from stores in "age 21" cities and towns.	43 (38=age 21; 5=age 19) Needham first with effective date of April of 2005
Ban the sale of blunt wraps (sales)	No sales of "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."	Reduces nicotine addiction onset through a product almost exclusively used for illegal drug delivery. Low price and variety of flavors are attractive to youth.	Businesses will have to stop selling this line of tobacco. Boston's ban upheld by the MA Supreme Judicial Court. Police usually like this ban due to the illegal drug delivery nature.	93
Ban redemption of certain coupons for tobacco (mimics federal court-approved Providence ordinance) (sales)	Ban coupon redemption for cigarettes that would drive the price below the state-set minimum price and bans coupon redemption for free non-cigarette tobacco items.	Long-held data shows that increased cigarette prices reduces consumption and prompts smokers to quit. Free tobacco products encourages new users.	Helps tobacco manufacturers and not retailers. Coupons do not assist any one type of retailer.	85
Ban self-service displays (sales)	Eliminates customer ability to self-select a tobacco product without clerk assistance. Expansion to include e-cigarettes is important to reduce youth use.	Reduces theft of tobacco products. Adds a step to purchase process which reduces illegal sales.	Mass. Attorney General regulations limit displays. General business consensus has done away with these displays.	207

Ban vending machines (sales)	Eliminates tobacco sales through vending machines.	Requires face-to-face transaction with a clerk which reduces youth sales. US FDA regulations limit them to establishments that never permit minors to enter.	Mass. Attorney General regulations limit location of machines. Very few machines still exist. Those remaining machines often in private clubs but still may violate the FDA regulations.	184
Ban non-residential Roll-Your-Own machines (sales)	Eliminates a loophole in federal law that allows RYO private clubs to sell cheap cigarettes	Long-held data shows that increased cigarette prices reduces consumption and prompts smokers to quit.	Helpful to business to not have a "private club" competitor undercutting their cigarette prices. Allows RYO machine sales for home use.	110
Ban the sale of tobacco and e-cigarettes in health care institutions including pharmacies (sales)	Bans the sale of these products in doctor and dentist offices, hospitals, clinics, pharmacies and any location that fits definition	De-couples the sale of a dangerous product (tobacco) with the sale of medications or health care delivery.	Any location that is considered a "health care institution" will no longer be issued a local tobacco sales permit	106 Boston first with effective date of 2/11/09
Ban the sale of tobacco and e-cigarettes in educational institutions (sales)	Bans the sale of these products in colleges, universities, trade schools or any location that fits definition	De-couples the sale of tobacco in learning institutions usually populated with students in their late teens and early 20's	Any location that is considered an "educational institution" will no longer be issued a local tobacco sales permit	107 Boston first with effective date of 2/11/09
Expand tolling period (sales)	Expansion from 12 to 24 months will require retailers to abide by ordinance to avoid repeat offender penalties which may include permit suspension.	With fewer compliance checks per year, retailers may consider one fine per year as "cost of doing business". This increase will foster compliance.	As Worcester has had a tobacco ordinance since 1996, retailers should be well aware that they must card suspect customers. Those in compliance will see no change due to this tolling period expansion.	24 months = 75 36+ months = 45
E-cigarette usage limited (ETS)	Bans e-cigarette use in those locations that are required to be smoke-free by either state law or Worcester ordinance	The safety of the exhaled vapor from an e-cigarette user is unknown, especially if the e-cigarette solution is "home-grown".	No effect for retailers, restaurants and bars. Assists workplaces not knowing what to do about employee "vaping".	77
Smoking ban for certain outdoor locations (ETS)	Bans smoking in parks, playgrounds, non-school athletic fields and beaches	Further denormalizes tobacco use where youth congregate and recreate. Reduces cigarette butt trash.	No effect.	Parks = 34 Playgrounds = 34 Beaches = 36 Athletic Fields = 30
Expand existing smoke-free buffer zone (ETS)	Bans smoking on library property. Expands health care institution no-smoking buffer zone to 200 feet and allows for expanded enforcement.	Reduces second-hand smoke exposure by patients, their families and health care professionals while entering/exiting facilities.	No effect.	
Ban smoking in "smoking bars" (ETS)	Bans smoking in the indoor space of both cigar bars and hookah bars.	Eliminates second-hand smoke when these bars are located in multi-use buildings. Hookah bars popular with college-age group. Hookah presents other sanitary code issues. Breaks "level playing field" that restaurants and bars must abide by.	Business viability seriously compromised with this policy and is not recommended in municipalities that already have cigar bars or hookah bars in operation.	89
Ban smoking in "retail tobacco establishments" (ETS)	Bans smoking in the indoor space of tobacconists, smoke shops, cigar shops	Eliminates second-hand smoke when these stores are located in multi-use buildings. Thwarts "mini-casino" problem with Keno	Potential customers who want to "test" fine tobacco before purchase will need to step outside to do so.	38

Establishment: Sully's First Edition
Establishment Address: 11B Florence Street
Owner: Richard Sullivan

Health Department Administrative Hearing – December 2, 2014

Administrative hearing for non compliance with order letter issued on October 14, 2014 (installation of 3 compartment sink) and repeat violations.

09/05/14 During a comprehensive inspection completed by Maureen Lee it was observed sinks in the kitchen is limited to a hand sink and a single bay sink contained in the soiled side of the dish machine table. Mr. Sullivan was instructed to contact the Marlborough Health Department for discussion of the installation of a 3 compartment sink.

The establishment was debited with the following critical violations: Consumer Advisory incorrect statement and format, non compliance with allergen poster and certification, no choke save certification, hand sink not stocked, food contact surfaces/soil contact, slicer with dried on debris, dish machine rinse below 180F, chicken observed without temperature controls 64F, Walk-in refrigerator phf's 51F- 53F.

10 Critical Violations, 12 non critical violations

09/25/14 During the re-inspection Mr. Sullivan had not contacted the Health Department for discussion of the installation of the 3 compartment sink. Mr. Sullivan was told a 3 compartment sink was required and upon return to the office I would discuss the situation with Dr. Sam Wong; Interim Director.

The re-inspection resulted in the following repeat violations: Consumer Advisory, choke save certification, allergen certification, slicer with dried on debris, dish rinse below 180F.

5 critical violations, 5 non critical violations remaining, no contact with Health Department for installation of 3 compartments sink

09/26/14 Dr. Sam Wong met with Mr. Sullivan on site to discuss the installation of the dish machine and other outstanding violations. At that time Mr. Sullivan committed to installing the 3 compartment sink within 2 weeks (10/10/14) and would correct all violations.

10/14/14 A re-inspection was completed by Maureen Lee to verify outstanding violations were corrected. The re-inspection resulted in continued repeat violations, and 3 compartment sink was not installed. An order letter was issued requiring the following:

1. Written drawing showing the location of the 3 compartment sink
2. Manufacture specification sheet
3. Installation date not to exceed 30 days form the date of the letter.

The re-inspection resulted in the following repeat violations: Consumer Advisory, allergen certification, dish rinse below 180F.

3 critical violations, 3 non critical violations remaining, 3 compartment sink not installed as agreed to with Dr. Wong.

10/20/14 A re-inspection was completed by Maureen Lee to verify outstanding violations were corrected. *The Health Department office had not received written information as outlined in the order letter dated 10/14/14.* Ms. Lee reviewed the contents of the order letter and reminded Mr. Sullivan of his compliance responsibilities. Mr. Sullivan identified the location of the 3 compartment sink. Ms. Lee stated she was concerned about the work flow and the opportunity of cross contamination. Mr. Sullivan was again reminded a drawing was required showing the location of the equipment so the work flow could be determined.

The re-inspection resulted in the following repeat violations: Consumer Advisory, allergen certification, dish rinse below 180F.

3 critical violations, 3 non critical violations remaining

11/17/14 A re-inspection was completed by Ms. Lee to verify outstanding violations were corrected. 3 compartment sink on site, observed in box. Mr. Sullivan provided purchasing information from the order book. During the re-inspection Ms. Lee was able to identify sink has 3 small compartments and drain board on each side. Drawing showing location not submitted, installation date not provided.

2 non critical violations remaining, 3 compartment sink not installed.

12/12/14 Grace Martins contacted the Health Department office informing us she had been hired by Mr. Sullivan as his consultant.

12/12/14 Maureen Lee contacted Mr. Sullivan by phone to remind Mr. Sullivan he was required to schedule a meeting with his consultant, Steve Ward and Maureen Lee to review the requirements of the Board of Health Order Letter, inspection history and to address questions Mr. Sullivan or his consultant may have.

Mr. Sullivan was requested to contact Tina Nolin at the Health Department to schedule a meeting before the end of the business day. If Mr. Sullivan was not able to be in contact with his consultant to confirm a meeting date and time until after the Health Department closed he was provided with Ms. Lee's cell number and asked to contact her over the weekend to confirm a meeting for the morning of 12/15/14.

12/15/14 Grace Martins contacted the Health Department office to confirm her attendance at a 10am meeting. Mr. Sullivan did not attend the meeting and was not able to be contacted.

During the meeting Mr. Ward and Ms. Lee reviewed the Board of Health order letter and inspection history. Ms. Martins stated Mr. Sullivan had not shared the order letter with her in their discussions. Mr. Ward explained the contract submitted did not contain the scope of the work required by the order letter and a meeting with Mr. Sullivan was still required.

12/23/14 A meeting to review the Board of Health order letter and inspection history was held with both Richard Sullivan and Grace Martins in attendance. A revised contract detailing the scope of services and a Capital Improvement Plan were to be submitted to the Health Department for review. In addition Mr. Ward presented compliance information and structural improvements required by the Building Department. He requested Ms. Martins to confirm if the Building requirements would be within her expertise to address and suggested Mr. Sullivan and Ms. Martins contact the Building Department at the conclusion of our meeting.

12/24/14 Grace Martins provided a Plan of Correction and an unsigned revised contract to the Health Department office. According to her email Mr. Sullivan was to provide a signed copy of the contract.

12/29/14 The Health Department received an email informing us she was no longer providing services to Mr. Sullivan due to failure to pay.

12/30/14 An inspection was scheduled for 1/6/14 at Sully's to provide the current compliance status for the Board of Health.



CITY OF MARLBOROUGH

BOARD OF HEALTH

140 Main Street, Lower Level
Marlborough, Massachusetts 01752
Facsimile (508) 460-3625 TDD (508) 460-3610

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

12/22/14

Mr. Richard Sullivan
Sully's First Edition Pub
11-b Florence Street
Marlborough, MA 01752

Delivered by: S. MARTIN
Date: 12/23/14

Re: Compliance with Board of Health Decision Letter dated December 6, 2014

Dear Mr. Sullivan,

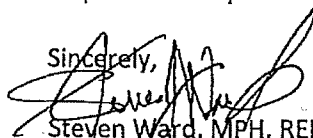
The contract provided to our office on December 12, 2014 by Ms. Grace Martins from Trilingual Food Safety/ MAP & Health Care Consultant is limited to Food Safety Training for your staff. The scope of service provided in the contract is deficient in the following areas:

- Develop and implement an effective approach that will demonstrate compliance with 105CMR 590.000 and the 1999 Federal Food Code as outlined in the decision letter dated 12/6/14.
- Develop and implement a plan to bring the walk-in refrigeration unit surfaces into compliance.
- Perform audits food compliance for the months of January, February and March of 2015.

During a meeting attended by your consultant, Ms. Grace Martins, stated she was not aware of the decision letter by the Board of Health and was not provided a copy during your discussion with her. A copy of the Board of Health decision letter dated 12/6/14 and inspection history were provided to Ms. Martins. At the conclusion of our meeting, Ms. Martins stated she would be in contact with our office to arrange a meeting with yourself, Ms. Martins, Maureen Lee and myself. To date our office has not received a request for meeting. Please be aware you are not in compliance with the Board of Health Decision letter. A contract providing the scope of services required in the order letter dated 12/6/14 has not been received by this office. In addition, you and your consultant failed to attend a meeting by 12/12/14 to review the establishment inspection history and the contents of the order letter dated 12/6/14.

You are hereby required to comply with the Board of Health Decision Letter dated 12/6/14 and attend the January 6, 2015 Board of Health Meeting to discuss the status of your compliance with the Board of Health Decision Letter dated 12/6/14. Should you have any questions regarding your compliance responsibilities please contact our office at 508-460-3751.

Sincerely,


Steven Ward, MPH, REHS/RS
Interim Director of Public Health

CC: File
Board of Health
Grace Martins
Maureen Lee

RECEIVED
DEC 23 2014

BY: 

Maria Da Grace Martins RN
Trilingual Food Safety Consultant
76 Washington ST Peabody MA 01960
978-977-0717

12/29/2014

Steven J Ward
Interim Board of Health Director
Marlborough Board of Health and Licensing Board 140 Main Street,
Marlborough, MA 01752

Re: Disengagement of consulting services with Mr. Sullivan

Please accept this letter as proof that I am cancelling my "contractual obligations" to offer consulting services to Mr. Sullivan. I have notified my client by text as it is his preferred means of communication and will follow up with an email. I am NO longer able to provide consulting services for failure to receive payment for services and failure to have an amended service contract signed as required by the BOH. I was initially contracted by Mr. Sullivan under the wrong impression of what was expected. Once I met with you and learned of the extent of Mr. Sullivan's current issues and capital improvements requested, I had to create a new contract to reflect those needs. I submitted this contract last week on 12/24/14 along with a detailed plan for visits. I requested that he read all information, sign it and then send to the BOH on that date. I was scheduled to provide services on 12/27/14 to help with time line. On Saturday I contacted Mr. Sullivan and asked if he had my payment as requested. He stated "I will call you tomorrow". I cancelled the visit as Mr. Sullivan did not have payment for services.

Today 12/29/14 after careful consideration, I have decided to cancel my services and notified Mr. Sullivan and the BOH. My client has failed to provide me with the payment plan I created to help him meet his needs. As you are well aware, I have met with Mr. Sullivan and created a plan of correction dates. However, he has not been correcting all I have requested and appears unable to financially comply with my required fees.

I completed an inspection of his facility, met with your department, the building Inspector and provided training to his PIC. He has already received ALL the consulting he needs. He needs to comply and correct all violations. I also suggest he obtain a ServSafe certificate.

Respectfully submitted,

Grace Martins RN/Trilingual Food Safety Consultant

978-977-0717

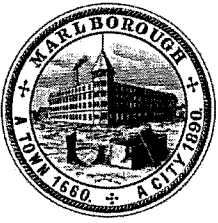
To: Marlborough Board of Health,

We, Sisters of St. Anne, are respectfully requesting a hearing to discuss violation #25 (FC-4) (590.004) cited on our most recent inspection conducted on 12/9/14. Our establishment has been ordered to install a three compartment sink to comply with the 1999 FDA Food Code 4.301.12(A). Under our current permit we wash, rinse, and sanitize all equipment and utensils utilizing an approved ware washing machine. Our machine is of adequate size to accommodate all of the equipment and utensils used in our daily operations. If an emergency situation arises and we cannot utilize our ware washing machine or we need to utilize a manual method to wash, rinse, and sanitize equipment or utensils, we request that our currently approved and permitted method of using a two compartment sink to meet the public health concern be allowed under the 1999 FDA Food Code 4.301.12 (C).

Paul Gaudet



Food Service Director



CITY OF MARLBOROUGH

BOARD OF HEALTH

140 Main Street, Lower Level
Marlborough, Massachusetts 01752
Facsimile (508) 460-3625 TDD (508) 460-3610

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

December 30, 2014

Mr. Paul Gaudet
Sisters of St. Anne's
720 Boston Post Road East
Marlborough, MA 01752

Re: Food Code Variance Request

Dear Mr. Gaudet,

The Marlborough Board of Health is in receipt of your letter requesting a variance letter (enclosed) from violation #25 (FC-4) (590.004) that was cited on your most recent food establishment inspection report. Specifically you are seeking relief from the requirement to install a three compartment sink to comply with the 1999 FDA Food Code 4.301.12 (A). Furthermore in your letter you state that if an emergency situation arises and you cannot utilize your ware washing machine that you be allowed to use a two compartment sink to wash, rinse and sanitize equipment or utensils.

Please be advised that this matter will be heard on January 6, 2015 at 8:15 PM in Memorial Hall, located in City Hall, 140 Main Street, Marlborough Massachusetts.

Should you have any questions concerning this matter you may contact this office at 508-460-3751.

Sincerely,

Steven J. Ward
Interim Director of Public Health

CC: File

**City of Marlborough
Board of Health
City Hall
140 Main Street
Marlborough, MA 01752**

Board of Health
_____, Chairman
_____,
_____, M.D.

DRAFT FEE SCHEDULE

Tel: (508) 460-3751

health@marlborough.gov

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

**CITY OF MARLBOROUGH
FEE SCHEDULE FOR LICENSES AND PERMITS**

PERMIT	FEE	EXPIRATION DATE
Food Service Establishments*		
Food Service (Seats 0 – 49 seats)	\$100.00	December 31st
Food Service (Seats 50 & Over)	\$175.00	December 31 st
Temporary	\$25.00	December 31 st
Non-Profit	N/C	December 31 st
Schools	N/C	December 31 st
Schools (Outside)	\$50.00	
Theater/Concessions	\$50.00	December 31st
Churches	N/C	
Bakeries (under 3,000 Sq. ft.)	\$100.00	December 31st
Bakeries (over 3,000 Sq. ft.)	\$150.00	December 31st
		(Consider November 30 th for all food service permit renewals)
Review of Plans New/Renovations	\$50.00	
Retail Food Establishments		
Under 1,500 sq. ft.	\$100.00	December 31st
1500-4000 sq. ft.	\$125.00	December 31st
4000 – 5000 Sq. ft.	\$200.00	December 31st
		(Consider May 31 st)
Catering Establishment (Annual)	\$100.00	
Mobile Food Canteen (Per Truck fee)	\$50.00	
Milk License	\$25.00	Include in Retail Food Permit
		(Consider May 31 st)
Frozen Dessert Manufacturing	\$25.00	December 31 st
** Permitted Establishments Late Fee (per day fee – 14 day assessment followed by administrative hearing)	\$5.00	

**** New Fee *Consider Amendment**

PERMIT	FEE	EXPIRATION DATE
** Permitted Establishment Surcharge Fee <i>(Fee assessed for additional inspections as a result of non-compliance)</i>	\$75.00 per additional inspection	
Onsite Wastewater		
Percolation Test/Deep Hole	\$100/Lot	
Disposal Works Installers	\$50.00	Consider May 31 st
Permit to Install New Septic System	\$150.00	
Permit to Repair or Replace	\$100.00	
Septage Hauler (Per Truck Fee)	\$100.00	Consider May 31 st
Well Permit		
	\$100.00	
Swimming Pools & Whirlpools		
Semi-Public (annual)	\$100.00	December 31 st
Semi-Public (seasonal)	\$100.00	May 31 st
Special Purpose	\$75.00	December 31 st
Wading Pool (seasonal)	\$75.00	May 31 st
Review of Plans New/Repairs	\$50.00	
Miscellaneous		
Abrasive Blasting (Annual Registration of Company)	\$25.00	May 31 st (Assigned)
Abrasive Blasting (Per day fee)	\$75.00	
Motel Permit/Mobile Home	\$50.00	December 31 st ?
Tobacco Permit	\$100.00	December 31 st
Burial Permit	\$10.00	(Remove – City Clerk)
Rubbish Contractors (Per Truck Fee)	\$100.00	Consider May 31 st
Tobacco Permit	\$100.00	December 31 st
Wells/Plan Review	\$100.00	
Tanning Establishment Plan Review	\$200.00	
Funeral Directors	\$25.00	April 30 th ?
Tanning Establishment Permit	\$100.00	Consider May 31 st
Day/Recreational Camp	\$100.00	Upon Permit Application

* Consider Amendment

** New Fee



CITY OF MARLBOROUGH
Department of Public Works
Forestry, Parks, & Cemetery Division
135 Neil Street
Marlborough, Massachusetts 01752
(508) 624-6910
Facsimile (508) 624-7699 TDD (508) 460-3610

YEARLY OPERATIONAL PLAN
2015

Prepared and submitted by:

Christopher White,
General Foreman
Forestry, Parks & Cemeteries Division
City of Marlborough
Department of Public Works
135 Neil Street
Marlborough, MA. 01752

December 9, 2014

City of Marlborough
2015 Yearly Operational Plan

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A- Locus map

B-Herbicide Fact Sheets

C- Labels

D- U.S.G.S. Quadrangle Map

E- Floodplain & Wetlands Protection District Map with Sensitive Areas

F- Narrative of Sensitive Area Boundaries

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Program Purpose

The purpose of 333 CMR 11.00, Right of Way Management, is to promote the implementation of integrated pest management techniques and to establish standards requirements and procedures necessary to minimize the unreasonable adverse effects on human health and the environment associated with the use of herbicides to maintain streets. These regulations establish procedure, which guarantee ample opportunity for public and municipal agency review and input on the right-of-way maintenance plans.

A Yearly Operational Plan or YOP must be submitted to the Department of Agricultural Resources (Department) every year herbicides are intended for use to maintain rights-of-ways (ROW). The YOP provides a detailed program for vegetation management for the year. A five-year Vegetation Management Plan (VMP) has been approved by the Department and is available for review at the Board of Health, Conservation Commission, and office of the chief-elected official of the municipality.

Upon receipt of this YOP, the Department publishes a notice in the Environmental Monitor. The applicant must provide a copy of the proposed YOP and Environmental Monitor notice to the Board of Health, Conservation Commission, and the chief-elected municipal official for the city or town in which the herbicide treatment is proposed. The Department allows a 45-day comment period on the proposed YOP beginning with publication of the notice in the Environmental Monitor and receipt of the YOP and Environmental Monitor notice by each municipality.

Public notification and herbicide application to the streets is made at least 21 days in advance of the treatment by a separate notice. Notice is made to the Department of Food and Agriculture, the Mayor, City Manager or Chairman of the Board of Selectman, the Board of Health, and the Conservation Commission of the municipality where the streets lie.

Any comments on this YOP should be directed to the contact person listed herein as the person/s supervising the YOP or person/s performing the treatment.

This Yearly Operational Plan, approved by the Department of Agricultural Resources pursuant to the Rights of Way Management Regulations (333 CMR 11.00), has been adopted by the following municipality and agency. As the representative of the municipality and agency, the undersigned hereby acknowledges that the conditions of this Yearly Operational Plan, approved by the Department of Food and Agriculture pursuant to the Right-of-Way Management Regulations (333 CMR 11.00) has been adopted by the City of Marlborough. The undersigned hereby acknowledges that the conditions of this Yearly Operational Plan will be adopted and complied with.

MUNICIPALITY City of Marlborough

NAME Christopher White

AGENCY Marlborough Department of Public Works

ADDRESS 135 Neil Street
 Marlborough, MA. 01752

TELEPHONE (508)-624-6910 ext. 7601 Fax: (508)624-7699

Email: cwhite@marlborough-ma.gov

SIGNATURE _____

DATE _____

Signature of conservation official acknowledging that wetlands in the municipality have been delineated.

CONSERVATION
OFFICER Priscilla Ryder

SIGNATURE _____ Date: _____

Individual Supervising YOP

Individual supervising implementation and conditions of the YOP

Name and Title: Christopher White
General Foremen Forestry, Parks & Cemeteries
Division
L#31061

Department: Department of Public Works

Address: 135 Neil Street
Marlborough, MA. 01752

Telephone Number: (508)624-6910 ext. 7601

Signature: _____
Christopher White

Municipal Department Performing Herbicide Treatment

Herbicide treatment will be performed by City of Marlborough Department of Public Works employees. Applicators are certified by the Department of Food and Agriculture in the applicator category. Copies of certifications are on file at the Department of Public Works.

Name and Title: Christopher White,
General Foremen, Forestry, Parks & Cemeteries
Division

Licensed Applicator: TBD

Department: Department of Public Works

Address: 135 Neil Street
Marlborough, MA. 01752

Telephone Number: (508)624-6910 ext.7601

Signature: _____
Christopher White

Herbicides Proposed Including Application Rates, Carriers, Adjuvants

Herbicides that may be used on municipal roadways are limited to the following:

<u>Trade Name</u>	<u>EPA reg. No.</u>	<u>Active Ingredients</u>	<u>Guidelines</u>
Roundup Pro	524-475	Glyphosate	See Label
Accord/Rodeo	62719-324	Glyphosate	See Label
Oust Extra	352-622	Sulfometuron Methyl	See Label
		Metsulfuron Methyl	

The names and active ingredients of the herbicides proposed and the names of any carriers, adjuvant or additives to be used. Herbicide Fact Sheets for the Herbicides proposed are found in Appendices.

<u>Control Method</u> <u>Application %/ acre</u>	<u>Herbicide(s) Mixture %</u>	<u>Carriers/Adjuvant</u>
Foliar Treatment Per Label	Glyphosate per label Sulfometuron Methyl Metsulfuron Methyl 2.33/3oz-Acre	NA

Herbicide Application Techniques and Alternative Control Procedures

The herbicide(s) will be applied in accordance with the instructions in the attached manufacturer's information. Alternative control procedures, applicable at the designated "No Spray Zones" will consist of hand cutting, mowing, or selective trimming (mechanical). Other alternative controls will include routine street sweeping along with crack and road repairs.

Foliar Treatment

Foliar treatments involve the selective application of an herbicide diluted in water, to the foliage. Several types of equipment for foliar treatments may be used. These could include: backpack sprayers, hand-held pump sprayers or a motorized truck-mounted sprayer. Foliar treatments with backpack and hand-held pump sprayers are used on low-density target vegetation. The herbicide solution will be diluted to the lowest possible percent that will provide effective control of target species. Motorized application equipment may be used for foliar treatment on areas where the vegetation density is high and the use of a backpack spray may not be as effective. In both cases, the herbicide solution is applied to lightly wet the target plant/ target area. These techniques have few limitations with the exception being reduced effectiveness on tall, high-density target vegetation and will not be used on vegetation over 12 feet in height.

Cut Stump Surface Treatment

Cut stump treatments consist of mechanical cutting of target species using chain saws followed by herbicide treatment applied with a squirt bottle, a hand pump sprayer, or painted on the freshly cut surface of the stump. The cutting procedure is identical to that outlined in the Hand Cutting section of this VMP. Cut stump application can be effective during the dormant period, however may not be effective during times of sap flow (i.e., maples and birches during the months of February through early April), as flowing sap will limit the herbicide from being absorbed into the stump down to the roots. Certain types of herbicide formulations are limited to freshly cut stumps to be effective. Cut stump treatments will generally be performed to trees greater than 12' tall and resprout. All equipment used for vegetation management programs must be maintained in good working condition, and should be of adequate design and ability to produce the professional quality of work that the City requires. Because the City recognizes the vast variety and performance of herbicide application equipment, dictating how that equipment should be calibrated to deliver precise amounts of herbicide to effectively control a host of vegetation conditions is difficult. Therefore, the City insists that the applicator provide the most appropriate application equipment, calibrated to effectively and legally control target vegetation.

Both the applicator and/or the City are responsible to insure that vegetation management activities are conducted in a professional, safe, efficient manner, with special attention directed towards minimal environmental impact. The applicator is qualified, licensed and certified to apply herbicides. "Qualified" means those personnel who have been trained to recognize and identify target and non-target vegetation and are knowledgeable in the safe and proper use of both mechanical and chemical vegetation management techniques. All personnel applying herbicides in Massachusetts must be licensed in the Commonwealth and must work under the on-site supervision of a certified applicator. All contract

personnel will also follow all Label instructions regarding Personal Protective Equipment (PPE).

The City will rely on the applicator listed in the YOP for vegetation management applications and requires that applicators comply with all applicable federal and state laws and regulations. These include, but are not limited to, applicable OSHA, FIFRA and DOT regulations, 333 CMR 1-15.00, Rights-of-Way Management, Chapter 132B, Chapter 85 of the Acts of 2000 and 321 CMR 10.00 as managed by NHESP.

Herbicides will only be applied in a safe and judicious manner, in compliance with all-applicable State and Federal pesticide regulations.

Applicators will at all-time exercise good judgment and common sense during herbicide treatment activities, and will immediately cease operations if adverse conditions or other circumstances warrant.

Herbicides will NOT be applied during the following adverse weather conditions:

- A. During high wind velocity, per 333 CMR 11.03
- B. Foliar applications during periods of dense fog, or moderate to heavy rainfall
- C. Foliar applications of volatile herbicides during periods of high temperatures (90 plus degrees Fahrenheit) and low humidity
- D. Cut Stump applications when deep snow (i.e. 6" plus or ice frozen on stem or stump) prevents adequate coverage of target plants to facilitate acceptable control

The applicator or a representative of the City must complete daily vegetation management reports that include:

- A. Date, name and address of vegetation management applicator(s)
- B. Identification of site or work area
- C. List of crew members
- D. Type of equipment and hours used, both mechanical and chemical
- E. Method of application and description of target vegetation
- F. Amount, concentration, product name of herbicide(s), adjuvants, and dilutants (EPA registration numbers must be on file)
- G. Weather conditions
- H. Notation of any unusual conditions or incidents, including public inquiries
- I. Recording and/or verification of sensitive areas on ROW maps

A Daily Vegetation Management Form is included in Appendices

Target Vegetation

The target vegetation for this YOP will include hazard, detrimental, and nuisance vegetation.

Vegetation management crews will exercise care to insure that low-growing desirable vegetation and other non-target organisms are not unreasonably affected by the application of herbicides.

Hazard Vegetation

Hazard vegetation poses a risk to public safety and represents vegetation that impedes movement along public ways. Hazard vegetation may obscure sightlines, obscure signs, obscure vehicular movement, create windfall hazards, block storm drains and cause winter shading (causing ice/reduced melting). Hazard vegetation may include but is not limited to trees, tree limbs and shrubs.

Detrimental Vegetation

Detrimental vegetation includes grasses and woody plants that are destructive or compromise the function of infrastructure by growing in cracks along the roadway, pavement/bridge joints, medians/traffic islands, and drainage structures/drainage ways.

Nuisance Vegetation

This category includes vegetation that could cause problems to the general public, employees or contractors and generally include poisonous and noxious plant species. Nuisance vegetation poses a risk to safety and health often due to dermal contact with plants that are poisonous, heavily-thorned or densely colonized. Target vegetation in this category is primarily Poison Ivy and other nuisance vegetation within 10 feet of the edge of pavement.

Description of Methods Used to Flag or Otherwise Designate Sensitive Areas

Sensitive areas as defined by 333 CMR 11.04 are “any areas within Rights-of-Way, including No-Spray and Limited Spray Areas, in which public health, environmental or agricultural concerns warrant special protection to further minimize risks of unreasonable adverse effects.”

The attached map identifies ‘Sensitive Areas Not Readily Identifiable in the Field. With this map and the assistance of the Conservation Commission Agent, sensitive areas will be identified and marked along the ROW prior to any herbicide application. Field Methods will include flagging and/or roadway marking (via paint) of start and stop areas.

“No Spray Zones” have been marked by personnel under the director of the Conservation Officer.

Personnel have been given lists of sensitive areas to be kept in vehicles used in the vegetation control operation

The lists also have the closest permanent marker used to define the boundary limits of sensitive areas (i.e. Telephone pole #'s, building numbers, or road location with distance from culverts or bordering wetland vegetation).

Appendix F provides a narrative of the boundaries to the sensitive “no spray zones” that have been marked on the Flood plains and Wetlands Protection District Map.

Sensitive Area Restrictions (333 CMR 11.04)

Sensitive Area	No Spray Zone	Limited Use Zone	Where Identified
Wetlands and Water Over Wetlands	Within 10 feet	10 – 100 feet; 12 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps and identify on site
Certified Vernal Pool	Within 10 feet	10 feet to the outer boundary of any Certified Vernal Pool Habitat; 12 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps and identify on site
Public Ground Water Supply	Within 400 feet (Zone I)	Zone II or IWPA (Primary Recharge Area); 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps
Public Surface Water Supply	Within 100 feet of any Class A public surface water source	100 feet to the outer boundary of the Zone A; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps
	Within 10 feet of any tributary or associated surface water body located outside of the Zone A	10 feet to the outer boundary of the Zone A; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	
	Within 100 feet of any tributary or associated surface water body located within the Zone A of a Class A public surface water source		

Sensitive Area	No Spray Zone	Limited Use Zone	Where Identified
	Within a lateral distance of 100 feet for 400 feet upstream of any Class B Drinking Water Intake	Within a lateral distance of between 100 - 200 feet for 400 feet upstream of intake; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	
Private Water Supply	Within 50 feet	50 – 100 feet; 24 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	In YOP well list and identify on site
Surface Waters	Within 10 feet from mean annual high-water line	10 feet from the mean annual high water line and the outer boundary of the Riverfront Area; 12 months must elapse between applications; Selective low pressure, using foliar techniques or basal or cut-stump applications	YOP Maps and identify on site
Agricultural and Inhabited Areas	N/A	0 – 100 feet 12 months must elapse between application; Selective low pressure, using foliar techniques or basal or cut-stump applications.	Identify on site
State-listed Species Habitat	No application within habitat area except in accordance with a Yearly Operational Plan approved in writing by the Division of Fisheries and Wildlife		YOP Maps

Procedures and Locations for Handling, Mixing and Loading of Herbicide Concentrates

The herbicide will be mixed in the controlled environment at the Marlborough Public Works Garage located at 135 Neil Street in Marlborough.

Although it is expected that all the mixed herbicide will be used, any remaining will be stored at the Marlborough Public Works Garage in accordance with manufacturer's instructions. The absorbent product "Speedi-Dri" will be available for use at the locations of application. If there is a leak in the hose, the pump will be immediately shutoff.

Equipment used will be washed at the Marlborough Public Works Garage.

Herbicides will be handled and applied only in accordance with the label instructions.

Applicators will strictly adhere to all mandated safety precautions directed towards the public, the applicator and the environment.

Remedial Plan to Address Spills and Related Accidents

All mixing and loading of herbicides will be conducted at the Marlborough Public Works Garage where the herbicides are stored. Only the amount of herbicide necessary to carry out the vegetation control, based on monitoring results, will be mixed to ensure that there will be no waste and minimize potential problems. The vehicles carrying out the spray operations will be equipped with a bag of absorbent, activated charcoal, leak-proof containers, a broom and a shovel in case of minor spills. A clipboard log of the herbicides on the vehicle will be kept on the vehicle. Herbicide labels and fact sheets will be carried on-site by the applicator.

As soon as any spill is observed, immediate action will be taken to contain the spill and protect the spill area. The cause of the spill must be identified and secured. Spill containment will be accomplished by covering the spill with absorptive clay or other absorptive material or, for large spills, building clay or soil dikes to impede spill progress. Until completely remediated, the spill area will be protected by the placement of barriers and by the delineation of the spill area by crew members. If a fire is involved, care will be taken to avoid breathing fumes from any burning chemicals.

Minor spills will be remedied by soaking up the spill with adsorption clay or other adsorptive material and placing it in leak proof containers, removed from the site and disposed of properly. Dry herbicides, such as granular, will be swept up or shoveled up directly in leak proof containers for proper disposal. All contaminated soil will be placed in leak proof containers, removed from the site and disposed of properly. Activated charcoal will be incorporated into the soil at the spill location per label instructions. Any minor spill will be reported to the Department of Agricultural Resources.

Major spills will be handled in a similar manner as minor spills, except in cases where the spill cannot be contained and/or removed by the crew. In this case the MassDEP Incident Response Unit and the Department of Agricultural resources must be contacted.

Emergency first responders (including but not limited to fire and police) will be immediately notified of a major spill and/or any size incident deemed a possible risk to public health, safety and the environment.

MassDEP will be contacted when there is a spill of a regulated quantity, regardless of major or minor spill status and in accordance with 310 CMR 40.0000 Massachusetts Contingency Plan.

Emergency Contacts

In the event of a spill, information on safety precautions and clean up procedures may be gathered from the following sources:

Herbicide label

Herbicide MSDS sheet

Herbicide Manufacturer

DOW (800) 992-5994

Dupont (800) 441-3637

Monsanto (314) 697-4000

NuFarm (877) 325-1840

Massachusetts Department of Agricultural Resource (617)626-1781

Massachusetts Department of Environmental Protection

Emergency Response (888) 304-1133

Department of Public Health

Environmental Toxicology Program (617) 624-5757

Massachusetts Poison Control Center

24-Hour Hotline (800) 222-1222

Chemtrec (800)424-9300

EPA Pesticide Hotline (800)858-7378

Massachusetts Poison Control Center (800)682-9211

City of Marlborough Public Works (508)624-6910

Marlborough Fire Department (508)481-2323 or 911

Marlborough Police Department (508)485-1212 or 911

National Pesticide Information Center (800)-858-7378

National Animal Poison Control Center (888)-426-4435

APPENDICES

Appendix A

Locus Map

Appendix B

Herbicide Fact Sheets as Approved by the Department of Agricultural Resources

Appendix C

Product Labels

Appendix D
U.S.G.S Quadrangle Map

Appendix E

Floodplain & Wetlands Protection District Map with Sensitive Areas

Appendix F

Narrative of Sensitive Area Boundaries

Appendix G

Municipal Sign off Sheets of Chief Elected Official (Mayor)
Board Of health

Appendix H

Daily Vegetation Report



City of Marlborough
Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

Arthur G. Vigeant
MAYOR

Michael C. Berry
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

January 28, 2014

Mr. Michael W. McLean,
Rights-of Way Coordinator
Supervisory Pesticide Inspector
Department of Agricultural Resources
Vegetation Management Review Board
251 Causeway Street, Suite 500
Boston, MA 02114-2151

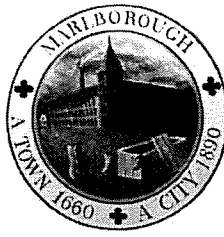
RE: Vegetation Management Plan, Five Year Vegetation Management Plan (2014-2018)

Dear Mr. McLean,

This correspondence serves to inform you that a copy of the City of Marlborough's Vegetation Management Plan has been received by the Mayor's Office, reviewed and approved. It is the intent of the City to implement the methods of vegetation control as outlined in said Plan and my understanding is that it will remain in effect for a period of five years.

Sincerely,


Arthur G. Vigeant
Mayor



CITY OF MARLBOROUGH
Department of Public Works
Forestry, Parks, & Cemeteries Division
135 Neil Street
Marlborough, Massachusetts 01752
(508) 624-6910
Facsimile (508) 624-7699 TDD (508) 460-3610

June 17, 2014

Re: Rights of Way application,

Ms. Ryder,

As required under CMR333: Sec 11.07 I am notifying your office and Commission of our intent to make an application in accordance with the approved Yearly Operational Plan (YOP).

Attached you will find the needed information which applies to the City's intent to make said application. If you are in need of any further information please feel free to contact me at (508) 624-6910 ext. 7601 or by email cwhite@marlborough-ma.gov.

Sincerely,

Christopher white
General Foreman, Forestry, Parks & Cemeteries Division