

CITY OF MARLBOROUGH

BOARD OF HEALTH POSTING

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CITY OF MARLBOROUGH

Meeting Name: Marlborough Board of Health

Date: May 5, 2015

2015 MAY -1 A 11: 51

Time: 6:30 PM

Location: 140 Main Street, City Hall, Council Committee Room, First Floor, Marlborough, MA

Agenda

1. **Call to Order**
2. **Administrative**
 - Review April 14, 2015 Meeting Minutes
3. **Board Business**
 - Review/Adopt Draft Tobacco Regulations
 - Update on Assistant Sanitarian Position
 - Prevention & Wellness Trust Fund Grant Community Health Worker
 - Beach Testing
4. **Public Health Nurse**
 - Maven Report
 - DOT Report
5. **Announcements/Correspondence**
 - Inter-Municipal Agreement
6. **New Business**
 - Conservation Commission Request
7. **Monthly Report**
 - Assistant Sanitarian
8. **Other Business unknown at time of posting**
9. **Adjourn**
 - Next Meeting Date



BOH MEETING MINUTES – 04/14/15

Attending

James Griffin, Chairman
John Curran, MD, Vice Chairman
Robin Williams, Member

Also In attendance: Cathleen Liberty, Director of Public Health; Tina Nolin - Clerk

Meeting called to order 6:26 pm

REVIEW OF MEETING MINUTES

Meeting minutes of March 3, 2015

Motion to accept minutes of March 3, 2015– R Williams

Second –Chairman Griffin

Vote – Chairman Griffin – yes, Vice Chairman Curran – yes, Member Williams – yes.

3-0 Vote to accept minutes of March 3, 2015

BOARD BUISNESS

Update on Sully's First Edition Pub

Public Health Director Liberty and the Sanitarian went down to the establishment today and saw that the work pending is to have the interior of the walk-in refrigerator and wall behind the three-bay-sink be covered with epoxy to provide a smooth, cleanable surface. Mr. Sullivan agreed that the work would be finished by May 11, 2015, and if the work is not complete, Mr. Sullivan will come before the board of health to determine final decision of the board.

Variance requests for HACCP plan for both Jung Sushi and AFC

Both plans have been reviewed by the Dir. Liberty and recommended for approval. After a short discussion of the need for the variance and how the plan would be carried out in each establishment Chairman Griffin motioned to approve and grant the variance, Seconded by Vice Chairman Curran.

Vote – Chairman Griffin – yes, Vice Chairman Curran – yes, Member Williams – yes.

3-0 Vote to accept both Jeng Sushi and AFC's HACCP plan and grant the requested variance.

Vote on Fee Schedule

Vote taken to adopt fee schedule with the understanding that the milk fee will be in compliance with Massachusetts Law, if Massachusetts Law does not call for such a milk fee it will be deleted from the schedule. Also adding, special process plan review charge of \$50.

Motion to accept fee schedule based on the milk stipulation above – Vice Chairman Curran

Second – Chairman Griffin

Vote Chairman Griffin – yes, Vice Chairman Curran – yes, Member Williams – yes

3-0 vote to accept fee schedule with milk stipulation and Special Process Plan Review Charge of \$50

Annual permits requested - Dollar Tree Store

Dir. Liberty recommended acceptance of Dollar Tree Store's request for an annual Food Permit.

Member Williams motioned to approve and give Dollar Tree Store an annual Food Permit, Chairman Griffin Seconded

Vote Chairman Griffin – yes, Vice Chairman Curran – yes, Member Williams – yes

3-0 vote to provide Dollar Tree Store with an Annual Food Permit

Vote on Tobacco Regulations

Vote tabled until next month as Cathleen reported legal was still working through the regulations and how they relate to the 5 regulations and 1 ordinance already on the city books

PUBLIC HEALTH NURSE

Nurse update

ANNOUNCEMENTS/CORRESPONDENCE

Dir. Liberty gave an update that job openings for Assistant Sanitarian and for Community Health Worker for PWTF have been posted.

MISCELLANEOUS ITEMS

Sanitarian Monthly Reports were submitted to the Board

ADJOURN

Motion – to adjourn meeting at 7:29 pm Member Williams

Second – Chairman Griffin

Vote Chairman Griffin – yes, Vice Chairman Curran – yes, Member Williams – yes

3-0 vote to adjourn Board of Health Meeting at 7:29 pm

Next Board of Health Meeting Tuesday, May 5, 2015 at 6:30 pm

Respectfully submitted,

James Griffin

Chairman, Board of Health

City of Marlborough

Minutes Approved: _____

Date: _____

Cc: Board of Health Members
City of Marlborough Website
City Clerk

**MARLBOROUGH BOARD OF HEALTH
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 Mass. Gen. Laws c. 111, § 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to Mass. Gen. Laws c. 270, § 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, including the city of Marlborough, which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time.

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.

Hotels, Motels and B&Bs: Temporary accommodations that are open to the public for rental and are not intended to be a domicile.

Membership association (also known as a private club): A not-for-profit entity which has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and which 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 Mass. Gen. Laws c. 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.

Municipal building: any building owned, leased or operated by the city of Marlborough.

Nursing home: a residential facility licensed pursuant to Mass. Gen. Laws c. 111, § 71.

Outdoor space: an outdoor area, open to the air at all times and unable to be enclosed by a wall or side covering.

Retail tobacco store: an establishment which is not required to possess a retail food permit and 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; in which the entry of persons under the age of 21 is prohibited at all times; and which maintains a valid permit for the retail sale of tobacco products 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. Gen. Laws c. 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 Mass. Gen. Laws c. 270, § 22 and/or 105 CMR 661.003. To the extent any of the definitions herein conflict with Mass. Gen. Laws c. 270, § 22 and/or 105 CMR 661.003, 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 in those workplaces listed in subsection (c) below.
- (b) Smoking is hereby prohibited in the city of Marlborough in accordance with Mass. Gen. Laws c. 270, § 22 (commonly known as the “Smoke-Free Workplace Law”).
- (c) Pursuant to Mass. Gen. Laws c. 270, § 22(j), smoking is also hereby prohibited in:
 - 1. Smoking bars;
 - 2. Retail tobacco stores;
 - 3. Municipal-owned parks, playgrounds, athletic fields, and beaches;
 - 4. The area within twenty (20) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty-foot area, nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product;
 - 5. Nursing homes;
 - 6. Membership associations;
 - 7. Hotels, motels, and B&B rooms;
 - 8. Public transportation, bus and taxi waiting areas; and
 - 9. Outdoor space where food and/or beverages are served to the public by employees of restaurants, bars and taverns.
- (d) The use of e-cigarettes is prohibited wherever smoking is prohibited per Mass. Gen. Laws c. 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 permitted, 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 date 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 Marlborough Board of Health and its designees.
- (4) Violations of Section 4(b) above shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Mass. Gen. Laws c. 40, § 21D without an enabling ordinance. The disposition of fines assessed shall be subject to Mass. Gen. Laws c. 111, § 188.
- (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 Mass. Gen. Laws c. 40, § 21D.
- (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, in writing, with the Marlborough Board of Health to initiate an investigation and request enforcement of this regulation.

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, which shall remain in full force and effect.

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 otherwise prohibited by such fire, health or other regulations.

SECTION 8: EFFECTIVE DATE

This regulation shall be effective as of _____, 2015.

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

MARLBOROUGH BOARD OF HEALTH REGULATION 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 throat;¹ and

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., a convenience store, supermarket, or discount store) or a gas station;² and

WHEREAS, nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes;³ and

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 has found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development;⁵ and

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

WHEREAS, research has shown that raising the minimum legal drinking age to 21 has reduced alcohol consumption among youth and has protected drinkers from long-term negative outcomes in adulthood, including alcohol and other drug dependence;⁶ and

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/sgsr/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.

WHEREAS, 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 teens;⁷ and

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 youth;⁸ and

WHEREAS, sales of flavored little cigars increased by 23% between 2008 and 2010;⁹ 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 and

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 and

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; and

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

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

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 and

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

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 and

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 and

WHEREAS, in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one;¹⁹ and

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 2011;²⁰ and

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.

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)).

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 underreported;²¹ and

WHEREAS, in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history;²² and

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

WHEREAS, nicotine levels in cigars are generally much higher than nicotine levels in cigarettes;²⁴ and

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 Non-Residential 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; and

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

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/Eeohhs2/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.nebi.nim.gov/pubmed/21809109.

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

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 and

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 undermines efforts to educate patients on the safe and effective use of medication, including cessation medication; and

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

WHEREAS, the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means;”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 Mass. Gen. Laws c. 111, § 31, which states "Boards of health may make reasonable health regulations."

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.

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).

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 Mass. Gen. Laws c. 64C, §, para. 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 Mass. Gen. Laws 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. Non-Residential 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. Gen. Laws c. 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) years of age.
2. Required Signage.
 - a. In conformance with and in addition to Mass. Gen. Laws c. 270, § 7, a copy of Mass. Gen. Laws c. 270, § 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 this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Before a Tobacco Product Sales Permit can be issued, 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.
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. 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 of the existing business if the buyer of that business 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, by amendment of this regulation, adjust from time to time the amounts specified in this section to reflect changes in the applicable Consumer Price Index.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute, or cause to be sold or distributed, any flavored tobacco product in Marlborough, 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 of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days; and
 - d. In the case of further violations or repeated, egregious violations of this regulation within a thirty-six (36) month period of the date of the current violation, 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 forth 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 by its owner, operator or business agent upon suspension or revocation of the Tobacco Product Sales Permit. Failure to so 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 Mass. Gen. Laws, c. 40, § 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, upon receiving the complaint in writing, 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. _____

Sara Oliveira

9 Davis rd C5

Acton, Ma, USA 01720

Tel: (508) 733-4482 Email: princessara1000@yahoo.com

Education Healthcote AAcademy Of Metrowest Apr 2013 ~ Jun 2013
Certified CNA
CNA/ HHA/CPR

Experience Bullock home Care Nov 2014 ~ Present
CNA
Meds reminder, driver, companion, personal care,
exercises, errands and drive to Doc's appoitments.

Hospice Compassus Sep 2013 ~ Present
Hospice
All ADL's, companion, hand massage, confort, help
with ambulation, feeling, and all personal care.

Partner's May 2013 ~ Nov 2013
CNA
Companion, personal care, meds reminder, and
exercises.

Grisworld Special Care Mar 2011 ~ Apr 2013
HHA
Personal Care, meds reminder, drive to appointments,
shopping, errands, light housecleaning and
companion.

Care Resolutions Mar 2009 ~ Mar 2013
HHA
Personal Care, Companion, meds reminder, shopping
and errands, companion and exercises.

Skills Experienced on all Adl's.
Medication organizer and reminder



City of Marlborough Conservation Commission

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

Edward Clancy – Chairman
Dennis Demers
Karin Paquin
Lawrence Rgy
John Skarin
Allan White
David Williams
Priscilla Ryder Conservation Officer

February 5, 2015

Steven Ward
Administrator, Board of Health
140 Main St. City Hall
Marlborough, MA 01752

RE: Ft. Meadow Reservoir Health, Algae and Septic System issues.

Dear Mr. Ward,

As you know, on January 29, 2015 the Marlborough Conservation Commission held a joint meeting with the Ft. Meadow Commission and the Hudson Conservation Commissions to discuss the health of Ft. Meadow Reservoir and weed and algae treatment options. There were a few questions raised at the meeting that were Board of Health items. We've listed them here and hope the Board of Health (BOH) can address them in writing back to us.

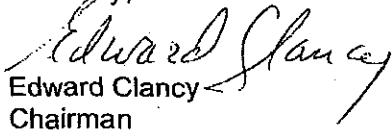
- 1. Algae monitoring:** Sam Wong from the Hudson BOH agreed that the algae could be monitored by the BOH staff taking the weekly water samples at the beaches along the lake in Hudson. A protocol will need to be developed for the lake as to when the algae issue should be reported to the state Dept. of Public health. We would like confirmation that the Marlborough BOH is willing to and agreeable to doing this monitoring as well and that you will work with the Hudson BOH to decide on a protocol for monitoring the algae.
- 2. The Red Spring Road septic systems:** The Commission reviewed the septic system information provided by the Marlborough Board of Health. Of the 28 homes on Red Spring Road, the BOH only had documentation on 12 of the 28 septic systems. This means there are 16 systems along this roadway and next to the lake about which you have no knowledge. Because of the ongoing weed issues in the lake and the need to identify and then address all nutrient loading sources from the lake, the three Commissions are requesting additional information about the remaining 16 septic systems and updates on the 12 you know about. [If these systems are found to be cesspools or under functioning septic systems, does the BOH have the authority to require that they be upgraded to meet Title V?] Sam Wong mentioned that the BOH should be receiving each year or two, the documentation from the septic hauling companies who have pumped the systems on Red Spring Road. Bob Landry indicated

they have received some but was not sure if all the systems have been pumped. Therefore, we would request that the BOH may want to inform and require the homeowners on Red Spring Road of these maintenance pumping and reporting requirement. If systems are not being pumped and maintained they could be having a detrimental effect on the lake. We'd like to request that the Board of Health look into these systems and report back to the three Commissions your findings and recommended actions, if any, to correct any deficient systems.

- 3. Better Communication:** One member of the audience at the meeting who lives on the lake in Marlborough was concerned that last summer the residents of Hudson were notified 24 hours before the Marlborough Residents about the algae bloom and health advisory to stay out of the lake. He has an immune deficiency disease and swam in the lake when the levels were high before being notified the next day. He and others around the lake were expressing concern that Marlborough BOH was not on top of the issues as Hudson was and that that could have compromised the health of people on the lake. Better communication about future algae bloom health hazards, and more prompt reporting through the reverse 911 system are very important to the residents. Given this concern, we are conveying to the Board of Health this issue and recommending that you look into the notification to abutters' process to ensure it is up to speed and is keeping residents informed promptly of any health risks associated with the lake.

We appreciate your time and hope you can address the above issues. If you have any questions or require clarification, please contact our agent Priscilla Ryder at 508-460-3768.

Sincerely,


Edward Clancy
Chairman

E-mail: Leif Longline, Chairman Hudson Con. Com
Lee Thomson; Chairman Ft. Meadow Commission
Gail Barbera; Lakeshore Association
Mike Barry, Executive Aide to the Mayor
Bob Landry, Marlborough BOH
Sam Wong, Hudson BOH