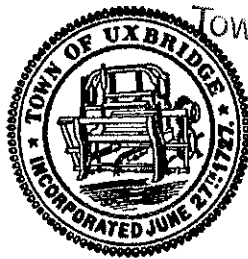


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Michael Morrissette, Chairman
Dr. David Tapscott, Vice Chairman
Dr. Joann Lindenmayer, Member

**Town of Uxbridge
Board of Health**
21 South Main Street, Room 204
Uxbridge, MA 01569
Phone: (508) 278-8600 X 8

Minutes of the Uxbridge Board of Health meeting held on Tuesday, October 16, 2018 at 5:30pm in the Board of Selectmen Meeting Room, 21 South Main Street, Uxbridge, MA

Present: Michael Morrissette, Chair, David Tapscott, Vice Chair, Joann Lindenmayer, Member (arrived late).
Also present, Kristin Black, Health Agent and Joan St. Andre, Food Inspector

Meeting called to order: The time being 5:37 pm and the meeting duly posted with a quorum present, Chairman Morrissette called the meeting to order.

(the agenda was taken out of order)

OLD BUSINESS

1. Clark University Research Plan: Uxbridge Aquifer and Atlas Project

Discussion – David is working with Clark University to provide an Atlas for the town including maps. Testing is being planned. It is an on-going project.

2. MA Dept. of Public health's Local Board of Health Internship

Discussion – Leslie Fowle completed her internship and the paperwork was submitted. Leslie provided Kristin with some feedback for future internships. She will be invited back to present her findings at a future Board meeting.

3. Greater Milford Community Health Network (CHNA 6) grant opportunity

Discussion – The application was submitted with most of the work being done by Alison Ciccone from the School Dept. The results will be given on Oct. 26th.

4. Review of Emergency Planning status

Discussion – Kristin and Joann are working to come up with a meeting date for the table top exercise and drill sometime this fall at the High School where all town depts. will be involved. One of the key items that came up at the Municipal Vulnerability Preparedness meeting was Emergency planning for the town. Kristin is hoping to meet with Chief Kessler to get some input from him on this subject before he leaves.

5. Updates on Recycling and Sustainability Committee

Discussion – They will meet quarterly at the Public Library and will be open to the public. They will be information sessions on different topics with the first one being in November on energy efficiency. They will be participating in Uxbridge First Night and hope to have recycling containers available in the Town Common. They are working with local businesses and will create a newsletter with the first one coming out this month. Each school has formed a Green Team and they are working on programs to foster "green" practices within the schools. It is in the early stages with many different layers.

Minutes of the Uxbridge Board of Health meeting held on Tuesday, October 16, 2018 at 5:30pm in the Board of Selectmen Meeting Room, 21 South Main Street, Uxbridge, MA

NEW BUSINESS

- 1. Staffing Updates** - Nancy Centrella was hired as the new Administrative Assistant. She will start part-time next week and then start the full-time schedule the following week. The office will then run at normal business hours.
- 2. Upcoming Flu Clinic, Tuesday, October 23 at Whitin School from 3-5 pm**
- 3. Emergency Dispensing Site Drills and Training** (see Review of Emergency Planning Status)
- 4. 0 Old Elmdale Development** - David received plans from the Planning Board. It is in the groundwater protection district. There are notes in plans on importing material, so the Soil Importation Regulation may apply. The ability to install septic systems may be very limited because of the high groundwater.

The Board opened the Public Hearing

- 5. Revisions to Board of Health Regulations, Article XVIII: Regulation Restricting the Sale of Tobacco Products**

Discussion – Public comments were heard at this time.

Henry Lane, Attorney spoke on behalf of five different business owner in town. They are all in agreement to raising the minimum age to 21. They do not understand why the cigar price needs to be regulated. They would like that to be deleted from the proposed regulations. The other concern is the prohibition of flavored tobacco. This would have a significant impact on these businesses and would shift the economic benefit to surrounding towns. They would also like to see this deleted from the proposed regulations.

Dennis Lane, Executive Director of the Coalition for Responsible Retailing, stated that he checked the FDA website to see if there were any violations with retailers in Uxbridge between 1/16-7/18. There were no violations. Retailers are doing their jobs by asking for identification when selling tobacco products. Kids can still get vaping products on-line, so the retailer is being punished. He would like to see the same Purchase, Possession and Use laws that exist for alcohol to also exist for tobacco products. The flavored products are extremely popular in all of these small businesses and it would be very harmful to them if this regulation were to pass. The Board asked if he had any documentation regarding kids buying products on-line. He said that the FDA has done studies on it and are now looking into ways to hold the internet accountable in restricting or even taking away the right to sell.

Tina Grosowsky, coordinator of the Central Mass Tobacco Free Partnership at UMass Medical School, stated that over 127 Mass. communities have already passed the flavored tobacco regulation. She would like to see all towns adopt this regulation so there won't be any argument that people can just go to other towns for their products. She spoke about the regulation raising the price of cigars stating that this will make it harder for kids to buy them. The FDA came down hard on the Juul Company, which will make it much harder for youth to purchase these products. The FDA only does inspections once a year on retailers, so the 30 month window means that only 2 checks were done during that time. We don't know the actual rates in Uxbridge of retailers selling to minors.

Nadeem Sattar, Mobile Honey Farms, is concerned that the adult only stores will still be able to sell the flavored products which will be unfair to the other stores in town.

Sam Wehbe, Lackey Dam Shell Station, they I.D. anyone that looks under the age of 35. They sell to responsible adults who do like different flavors. Their total tobacco sales is about 40% their total sales. Tina Grosowsky said that there has been no reports of loss of business in all of the town that have already adopted these flavored regulations.

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Henry Lane asked that if there is no loss of business, why pass the regulation at all? The ban has had no impact in the towns where it has already been passed. Kristin clarified that there is no data currently to support no loss of business. Henry Lane said that there have been articles saying that the restrictions have not stopped youth from smoking and vaping. The rates are still alarmingly high.

Mukesh Patel, Uxbridge Food Mart, he has 5 other stores and he had to close 1 already due to these regulations. He's asking to wait until the regulations are statewide so that certain communities are not punished. Tina Grosowsky said that statewide legislation cannot be passed until 50% of towns in MA pass the laws separately. Naddem Sattar said that he has other stores as well that have suffered greatly and he has 1 adult only store that is thriving, which proves that the adult only stores will have the monopoly on these products.

The Board stated that they have to do their job in looking out for Public Health, and that is the reason that these regulations are being revised. Kristin read a letter from a parent and community member praising the Board of Health for taking action to help protect our youth from these products. Mike can see both sides and believes the real problem is the internet. He doesn't like the idea of the adult only stores having a monopoly on these products. A question was previously asked if there could be a separate section within a store for the adult only products. Kristin reached out to D.J Wilson., the Director of the Municipal Tobacco Control Technical Assistance Program. He said that it has to be a separate address, with a separate entrance and a separate register. The Board would like to data from the state supporting revenue loss before they make a decision. And they would also like to see the prevalence of use of these products among youth in the communities where these regulations have been enacted. Kristin will reach out to D.J. to see if such data exists.

Motion – Joann Lindenmayer moved to continue the discussion of this regulation at our next meeting on Nov. 14, 2018, and in the meantime, try to amass data on both sides of the argument. David Tapscott seconded and the motion was passed unanimously with a vote of 3-0-0.

6. Revisions to Board of Health Regulation, Article XXIV: Regulation Prohibiting the Use of Tobacco and Marijuana products in Workplaces and Public Places (formerly referred to as Environmental Tobacco Smoke Regulations)

Discussion - Kristin Black presented the draft regulation which was modeled after the City of Framingham regulations. Draft regulation prohibits use of tobacco, marijuana, vaping and products similar to state's Smoke Free Workplace law. Discussion included smoke-free distance from entrances of buildings (drafted at 15') and inclusion of town owned recreational parcels such as Pout Pond. No comments from the public.

Motion – David Tapscott moved to continue the discussion of this regulation at our next meeting on Nov. 14, 2018. Joann Lindenmayer seconded and the motion was passed unanimously with a vote of 3-0-0.

ANY OTHER MATTER THAT MAY LAWFULLY COME BEFORE THE BOARD

ADJOURNMENT 6:55 pm

Motion: *David Tapscott moved to adjourn the meeting, Joann Lindenmayer seconded and the vote passed unanimously with a vote of 3-0-0.*


Minutes of the Uxbridge Board of Health meeting held on Tuesday, October 16, 2018 at 5:30pm in the Board of Selectmen Meeting Room, 21 South Main Street, Uxbridge, MA

Attachments:

- *Letter from Community Member*
- *Proposed Revisions to Articles XVIII and XXIV*
- *Tobacco Policy Summary List from the Municipal Tobacco Control Technical Assistance Program*
- *Article from the NY Times on the FDA Banning Flavored E-Cigarette Sales in Stores*
- *Letter from Henry Lane (Coalition for Responsible Retailing)*


Michael Morrissette, Chairman


David Tapscott, Vice Chairman


Joann Lindenmayer, Member



Uxbridge Town Hall
21 South Main Street, Room 204
Uxbridge, MA 01569
508-278-8600 x8 p
508-278-8604 f

**TOWN OF UXBRIDGE
BOARD OF HEALTH**

10/16/2018 @ 5:30pm.

Sign-In Sheet

	NAME (please PRINT)	ADDRESS
1.	Tina Grossowsky	UMass Medical School/Worcester
2.	Henry J. Lane	100 Main St., Whitinsville MA 01588
3.	Dennis Lane	CRR
4.	Nadeem Satt	Mohit
5.	SAM Wehbe	Shell Nova Energy
6.	Murugesu Datta	Uxbridge Food Mart BP
7.		
8.		
9.		
10.		
11.		
12.		



FW: Support for tobacco regulations

Denise Delannoy

Mon 9/17/2018 9:22 AM

To: Kristin Black <KBlack@uxbridge-ma.gov>; Dr. David Tapscott <DTapscott@uxbridge-ma.gov>; Joann Lindenmayer <JLindenmayer@uxbridge-ma.gov>; michael morrisette (patsarewinners@aol.com) <patsarewinners@aol.com>;

From: Amanda [mailto:ayers_amanda@hotmail.com]

Sent: Sunday, September 16, 2018 8:23 PM

To: boh <boh@uxbridge-ma.gov>

Subject: Support for tobacco regulations

September 16, 2018

Michael Morrisette
Chairperson
Uxbridge Board of Health
Town Hall
21 South Main St.
Uxbridge, MA 01569

Dear Chairperson:

As a parent and a public health professional, I care deeply about the health and well-being of Uxbridge's youth. We know the tobacco industry uses fruit and candy flavored tobacco products to target young people. The tobacco industry makes these products cheap and readily available at gas stations, convenience stores, corner stores and other places that youth frequently visit.

This is important because flavored tobacco products are considered "starter" products that can lead young people to long-term tobacco addiction. These products use the same flavors as popular candy and soft drinks to attract young buyers. The tobacco industry is targeting our kids with these products.

Young people in many communities are seeing these flavored tobacco products every day in the convenience stores they visit. Other communities have taken steps to remove these products from stores that youth frequent. Most recently in April the Worcester and Spencer Boards of Health passed this regulation. It's time for more adults in Uxbridge to take notice and take action to protect our youth. I support the Uxbridge Board of Health's proposed new tobacco regulations restricting the sale of flavored tobacco products. The Uxbridge Board of Health is to be commended for its proactive stand to protect the health of the youth in our community.

Sincerely,

Amanda Ayers
16 Tabor Road
Uxbridge, MA 01569



TOWN OF UXBRIDGE
Board of Health
21 South Main Street
Uxbridge, MA 01569-1851
508-278-8600 x 8
Board.Health@uxbridge-ma.gov

Article XVIII (proposed revisions for Public Hearing on Sept 25, 2018)

Regulation Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development (U.S. Department of Health and Human Services. 2014); and whereas it is addiction to nicotine that keeps youth smoking past adolescence (Id.); and whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are "starter" products that help establish smoking habits that can lead to long-term addiction (Food and Drug Administration. 2009); and whereas the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014 (Centers for Disease Control & Prevention. 2015); and whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them (Massachusetts Department of Public Health, 2015); and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco and nicotine products is a major problem; now, therefore it is the intention of the Town of Uxbridge Board of Health to regulate the sale of tobacco and nicotine-delivery products.

B. Authority:

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

C. Definitions:

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

Adult-only retail tobacco store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons

under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Town of Uxbridge Board of Health.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed to be filled by the consumer with loose tobacco or other fillers (regardless of content) and not to be used by the consumer as a final product.

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

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, 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.

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

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

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

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

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

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

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including the Town of Uxbridge or any agency thereof, which 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.

Liquid Nicotine Container: A bottle or other vessel which contains nicotine in liquid or gel form, whether combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

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

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

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

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

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

Schools: Public or private elementary or secondary schools.

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

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

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any

product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

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

D. Tobacco Sales to Minors 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 Uxbridge is 21 years old.

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 Town of Uxbridge Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.05 (2) (e).
- 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 Uxbridge 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 that rely on vaporization or aerosolization, as defined herein as "tobacco products", 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 it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth, confirming 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, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Uxbridge without first obtaining a tobacco sales permit issued annually by the Town of Uxbridge Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Uxbridge are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in the Town of Uxbridge.
2. As part of the tobacco sales permit application process, the applicant will be provided with the Town of Uxbridge Board of Health 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 is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue, when required by state law, before a tobacco sales permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. The fee for a tobacco sales permit shall be determined by the Town of Uxbridge Board of Health annually. All such permits shall be renewed annually by ~~July~~December 31st each year.
5. A separate permit is required for each retail establishment selling tobacco.
6. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
7. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
8. A tobacco sales permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new tobacco sales 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 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 sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
11. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
12. Maximum Number of Tobacco Product Sales Permits.

a. At any given time, there shall be no more than 14 Tobacco Product Sales Permits issued in Uxbridge. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits are either not renewed, revoked, or are returned to the Board of Health. For businesses with current Tobacco Permits who are transferring ownership, the new owner must apply within sixty (60) days of such sale or acquisition for the permit held; otherwise the permit is forfeited to the first applicant on the waiting list.

b. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.

c. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.00) or more.
3. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Uxbridge.
4. The Town of Uxbridge 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 adult-only retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in the Town of Uxbridge.

I. Free Distribution and Coupon Redemption:

No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

J. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of liquid nicotine containers must comply with the provisions of 310 CMR 30.000, and must provide the Town of Uxbridge Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."

K. Self Service Displays:

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

L. Tobacco 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 the Town of Uxbridge 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 the Town of Uxbridge 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. Incorporation of Attorney General Regulation 940 CMR 21.00:

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 ("Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts").

Q. Violations:

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco. The violator shall receive:

- a. In the case of a first violation, a fine of ~~one~~ three hundred dollars (\$300.00).
- b. In the case of a second violation within 12 months of the date of the current violation, a fine of ~~tw~~three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for seven (7) consecutive business days
- c. In the case of three or more violations within a 24 month period, a fine of three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco 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 directly to a consumer 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 Uxbridge Board of Health shall provide notice of the intent to suspend a tobacco sales permit, which notice may contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or 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 therefore in writing. After a hearing, the Uxbridge Board of Health may suspend the tobacco sales permit if the Board finds that a sale to a minor occurred. 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 shall be removed from the retail establishment upon suspension of the tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

R. Non-Criminal Disposition:

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

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

S. Enforcement:

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

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

T. Severability:

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

U. Effective Date:

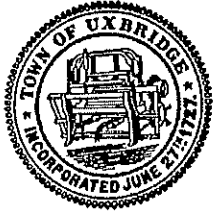
This regulation shall take effect on December 13th, 2018.

Formatted: Superscript

Michael Morrisette, Chairman

Dr. David Tapscott, Vice Chairman

Dr. Joann Lindenmayer, Member



TOWN OF UXBRIDGE
Board of Health
21 South Main Street
Uxbridge, MA 01569-1851
508-278-8600 x 8
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Article XXIV (proposed revisions Sep. 2018)

Regulation Prohibiting Smoking in Workplaces and Public Places
(formerly referred to as Environmental Tobacco Smoke (ETS) Regulations)

A. Statement of Purpose:

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

B. Authority:

This regulation is promulgated under the authority granted to the Uxbridge 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."

Further, this regulation is specifically permitted by Massachusetts General Laws, Chapter 94C, Section 32L, specifically, Section 2 of "An Act Establishing A Sensible State Marihuana Policy," which provides, in part, "[N]othing contained herein shall prohibit a political subdivision of the Commonwealth from enacting ordinances or bylaws regulating or prohibiting the consumption of marihuana or tetrahydrocannabinol in public places and providing for additional penalties for the public use of marihuana or tetrahydrocannabinol." Further, this regulation is promulgated in order to augment the Town's Tobacco smoking regulation, as set forth in the Board of Health Article XVIII Regulation Restricting the Sale of Tobacco Products, effective April 1, 1995, **[as amended September 25, 2018]**. Nothing herein shall be construed in any way preempting any provision thereof.

Further, this regulation is promulgated to negate the potential deleterious effects of second-hand smoke as emanating from tobacco, marihuana and THC, upon others, by, without limitation, causing discomfort and illness to nonsmokers; interfering with others' right to breathe smoke-free air and aggravating allergies, and causing irritation to the eyes, nose, and throat, to both smoker and non-smoker exposed to secondhand smoke.

C. Definitions:

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

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

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 1 or more employees at 1 or more workplaces, at any 1 time, including the commonwealth or its agencies, authorities or political subdivisions.

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

Establishment: any person, firm, corporation, establishment or agency within the Town of Uxbridge.

Food Service Establishment: any establishment holding a Food Service Permit within the Town of Uxbridge.

Health Care Facility: any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical physiological or psychological conditions including but not limited to rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist and all specialists within these professions.

Marihuana Product: A psychoactive drug extracted from the plant *Cannabis sativa*, or more often, *Cannabis sativa* subsp. *indica*. The herbal form of the drug consists of dried mature flowers and subtending leaves of pistillate (female) plants. The resinous form, known as hashish, consists primarily of glandular trichomes collected from the same plant material. The major biologically active chemical compound in marihuana is delta-9-tetrahydrocannabinol, commonly referred to as THC. Marihuana is also known as marijuana.

Membership association: 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 1 or more affiliated chapters or branches incorporated in any state; or
- ii. a corporation organized under Massachusetts General Laws Chapter 180; or
- iii. an established religious place or worship or instruction in the Town of Framingham whose real or personal property is exempt from taxation; or

iv. a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state. "Outdoor space" - an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Premises: includes the following: healthcare facilities, public places under the jurisdiction of the Framingham Board of Health, public transportation vehicles, retail stores, retail food stores, smoking bars, retail tobacco stores, membership associations also known as private clubs, food establishments licensed and/or permitted by the Board of Health of the Town of Framingham, or bar rooms licensed and/or permitted by the Board of Health and/or the Board of Selectmen of the Town of Framingham "Public Place" - An enclosed, indoor area when open to and used by the general public, including but not limited to the following facilities: Food Service Establishments, auditoriums, licensed child care locations, public schools, private schools, summer camps, clinics, hospitals, health care facilities, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, retail food stores, indoor sports arenas, public transit facilities, enclosed shopping malls, stairwells, hallways, entranceways, public restrooms, elevators accessible to the public, common areas in privately owned buildings, and any clubs, zooms or halls when open to the public or when used for public meetings. Public places shall also include all areas available to and customarily used by the general public in all business and non-profit entities patronized by the public, including but not limited to: offices, banks, laundromats, hair cutting establishments and salons, and hotels and motels. "Public Transportation Vehicle" - Buses, taxis, and other means of transportation available to the general public while such means or transportation is operating within the boundaries of the Town including indoor platforms by which such means of transportation maybe accessed. "Retail tobacco store" - an establishment which 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 4 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 Town of Framingham Board of Health. "Smoking" or "smoke" -the lighting of a 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". "THC" — a compound known as 49-tetrahydrocannabinol (delta-9-tetrahydrocannabinol). "Workplace" - an indoor area, structure or facility or a portion thereof, at which one 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. "Work space or work spaces" - an enclosed area occupied by an employee during the course of his employment.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, "e-liquids" or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use

cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

D. Use of Tobacco and Marijuana Products Prohibited:

- a. It shall be the responsibility of the employer to provide an environment free of tobacco and marijuana use for all employees working in an enclosed workplace.
- b. Use of tobacco is hereby prohibited in Uxbridge in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-Free Workplace Law".)
- c. Pursuant to with M.G.L. Ch. 270, §22(j) use of tobacco products is also hereby prohibited within fifteen (15) feet of an entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.
- d. Use of tobacco, vapor and marijuana products is also hereby prohibited in municipal vehicles or buses, on the grounds of any public or private primary, secondary, or vocational school, on the grounds of the Uxbridge Public Library and on the grounds of the Town Common (20 North Main Street, Uxbridge), Pout Pond (70 W River Rd, Uxbridge) and any town-owned recreational complexes (including playgrounds, ball fields and courts).
- e. No person shall use tobacco, marijuana or vapor products within school buildings or facilities, or on the grounds or school buses of a primary or secondary school, or at any school-sponsored event, including public and private schools.

E. Enforcement:

- a. 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:
 - i. \$300 for the first violation;
 - ii. \$300 for a second violation occurring within three (3) years of the first offense; and
 - iii. \$300 for a third or subsequent violation occurring within three (3) years of the second violation.
- b. An individual or person who violates this regulation by smoking in a place where smoking is prohibited shall be subject to a civil penalty of \$100 for each violation.
- c. Each calendar day on which a violation occurs shall be considered a separate offense.
- d. This regulation shall be enforced by the Board of Health and its designees.
- e. One method of enforcement may be periodic, unannounced inspections of those establishments subject to this regulation.
- f. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.
- g. Whoever violates any provision of this regulation, the violation of which is subject to a specific penalty may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 20, Section 21D.
- h. If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance the Board of Health may

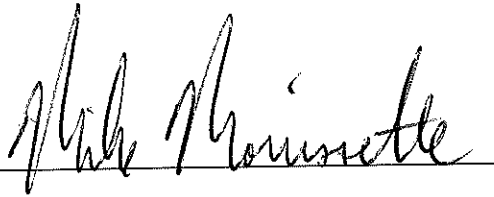
revoke or suspend the license to operate.

F. Severability:

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

G. Effective Date:

This regulation shall take effect on December 1, 2018.



Michael Morrissette, Chairman

Dr. David Tapscott, Vice Chairman

Dr. Joann Lindenmayer, Member

Revised 06SEP18

Municipal Tobacco Control Technical Assistance Program

Donald J. Wilson, Director
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TOBACCO POLICY SUMMARY LIST

The policy summaries listed below correspond to the checklists found in both the draft sales regulation.

1. **Regulate the Sale of Nicotine Delivery Products (e-cigarettes, etc.) the same as tobacco products and include them in the definition of "Tobacco Product".**
 - a. Age-restricts the sale to those over 18 (or the local MLSA) and treats them like tobacco products.
 - b. Requires e-cigarette vendors to have a permit and bans sale by vending machine or self-service display.
 - c. E-cigarette sales are currently completely unregulated by federal and state law.
 - d. Public health goal is to reduce youth nicotine addiction through e-cigarette use.
 - e. 218 cities/towns have enacted this policy.

2. **Cessation sign requirement in retail stores.**
 - a. Requires retailers to post state's "Quitline" toll-free number to inform smokers who are trying to quit.
 - b. Signs are provided free to municipalities from the Mass. Department of Public Health.
 - c. Public health goal is to remind current smokers that help in quitting is available to them for free.
 - d. 156 cities/towns have enacted this policy.

3. **Require single cigars be sold for at least \$2.50 and multi-packs of 2 or more cigars for at least \$5.00.**
 - a. Massachusetts statistics indicate that youth buy and smoke single, cheap, flavored cigars more than cigarettes.
 - b. Costs for cheap, flavored cigars are as low as 50 cents (versus \$9+ for a pack of brand-name cigarettes).
 - c. Public health goal is to discourage youth from impulse purchases of cheap cigars, leading to nicotine addiction.
 - d. Preliminary research of this policy enacted in Boston in 2011 indicates it has been effective.
 - e. Does not affect premium cigars that are not favored by minors.
 - f. May increase store revenue as additional dollar amount to reach minimum price is kept by retailer.
 - g. Boston's health regulation went into effect in February 2012.
 - h. To date, no data has been provided by retailers or their trade associations of any economic harm to vendors.
 - i. 151 municipalities currently have some form of this policy.

4. **No Tobacco Product Sales Permit renewal if outstanding fines exist.**
 - a. Now commonplace in many Massachusetts municipalities, this policy requires retailers to address outstanding penalties before their permit is renewed. Permits are typically renewed annually.
 - b. An issue of fairness for those retailers who operate within the law.

5. **No Tobacco Product Sales Permit renewal with three illegal sales to minors.**
 - a. This policy “raises the bar” by putting retailers on notice, that if they sell to a minor, as defined in the regulation, three times in one year, their permit will not be renewed.
 - b. Few cities and towns perform compliance checks three or more times per year so for a retailer to fail this permit condition would mean selling tobacco to minors in re-checks specifically prompted by previous compliance check failures.

6. **Limit the number of Tobacco Product Sales Permits to be issued.**
 - a. Caps the number of permits to be issued locally at any one time.
 - b. Provides conditions for renewal, sale of the permit holder’s business and a waiting list if maximum number is reached.
 - c. Reduces “retailer density”, which is always much higher for tobacco than for liquor.
 - d. Public health goal is that a reduced retailer density reduces exposure to tobacco by minors.
 - e. 116 cities and towns have enacted a policy to cap and/or reduce the number of local permits issued.

7. **No Tobacco Product Sales Permits to be issued to new retailers within 500 feet of a school.**
 - a. Policy is limited to new retailers only.
 - b. Provides conditions for permit renewal and sale of the permit holder’s business.
 - c. Public health goal is to reduce tobacco sales and exposure to tobacco by minors near schools.
 - d. 104 cities and towns have enacted this policy.

8. **Limit Flavored “Other Tobacco Products”, including E-Cigarettes, to adult-only retail tobacco stores.**
 - a. Expands the 2009 federal FDA regulation that banned flavored cigarettes to all tobacco products.
 - b. Policy is based on the same rationale used by the federal government that:
 - i. Flavored products are targeted to youth. (Tobacco industry documents acknowledge this fact.)
 - ii. Flavored products can still be sold in certain adult-only establishments where youth cannot see or buy them.
 - c. Public health goal is to thwart youth nicotine addiction with enticing flavored tobacco products rarely used by adults.
 - d. Federal court win by Providence, RI legally clears this policy for use in Massachusetts.
 - e. 126 cities/towns have enacted the same language as found in the Providence city ordinance.

9. **Raise the MLSA (Minimum Legal Sales Age) from 18 to 21.**
 - a. The Minimum Legal Sales Age for tobacco sales in Massachusetts is 18. This policy raises the minimum age.
 - b. The first MA municipality with this policy in effect was Needham in 2005. There have been no lawsuits to date.
 - c. More recent local policies extend the MLSA to nicotine delivery products such as e-cigarettes.
 - d. Public health goal is to delay the legal sale in order to reduce smoking prevalence among young adults.
 1. Neuroscience makes it clear that brains are not fully developed until about age 25, which means that an 18-year-old is not really making an “adult choice.”
 2. Addiction science makes it clear that the longer one refrains from using an addictive substance, the less chance one has to become addicted.
 3. Research demonstrated positive public health outcomes when the drinking age was increased from 18 to 21.
 - e. Raising the MLSA also eliminates “legal” high school students buying tobacco for their under-aged peers.
 - f. 182 cities and towns have a MLSA of 21 and 2 a MLSA of 19. New York City instituted an MLSA of 21 in 2014.

10. Ban the sale of blunt wraps.

- a. Forbids the sale of these tobacco products that are designed as a wrap or hollow tube, are usually highly flavored, usually cost less than a dollar, and are intended to be filled by tobacco or other substances.
- b. Does not affect plain-paper rolling papers.
- c. Ban is often supported by police chiefs as this product almost exclusively used for marijuana cigarettes.
- d. Boston's 2009 ban was upheld by the Mass. Supreme Judicial Court in 2011 in a lawsuit brought by manufacturers.
- e. Public health goal is to (1) reduce nicotine dependence by blunt wrap use and (2) reduce illegal substance use.
- f. 164 cities and towns have banned the sale of these products.

11. Ban coupon redemption for all non-cigarette products free and for cigarettes cheaper than state-set minimum price.

- a. Long established science-based data demonstrate that increased tobacco prices reduces both youth and adult consumption and prompts quit attempts.
- b. Public health goal is to eliminate free products that encourage new users, especially youth.
- c. Federal court win by Providence, RI legally clears this policy for use in Massachusetts.
- d. Approximately 100 cities/towns currently have this policy in place.

12. Ban out-of-package sales.

- a. Bans the ability for a retailer to open factory-wrapped product and sell it in smaller quantities or permit sampling.
- b. Public health goal is to reduce both sanitary code and Department of Environmental Protection violations (as nicotine is a hazardous waste when spilled), eliminates smaller, cheaper packaging that may be favored by youth with limited funds.
- c. Requires e-cigarette liquid (e-juice) retailers to submit a plan with how they will dispose of nicotine liquid.
- d. This language, coupled with the Free Distribution policy, bans the sampling of e-cigarette liquids by customers.

13. Ban self-service displays.

- a. Self-service displays, where a customer can select a tobacco product without clerk assistance, are banned in stores.
- b. Local measures in the last five years have expanded the policy to include e-cigarettes.
- c. Public health goal is to reduce tobacco theft and to require a face-to-face transaction with a store clerk that helps ensure the purchaser is of legal age to complete the tobacco sale.
- d. 231 cities and towns have this policy.

14. Ban vending machines.

- a. Vending machines, often unattended by a responsible business owner or clerk, are banned.
- b. The 2004 Massachusetts smoke-free workplace law, that banned smoking in restaurants and bars, caused the elimination of many of these vending machines.
- c. Massachusetts Attorney General regulations, coupled with federal law (and without any local policy) permit these machines ONLY in private clubs that NEVER permit the entry of minors into their premises.
- d. Local measures in the last five years have expanded the policy to include e-cigarettes.
- e. Public health goal is to eliminate an unsupervised method of tobacco sales that encourages youth purchase.
- f. 222 cities/towns have enacted this policy.

15. Ban non-residential Roll Your Own Machines.

- a. Eliminates a loophole found in federal law that permits "private clubs" to sell cheap cigarettes that violate Massachusetts state law mandating fire-safe cigarette filters.
- b. RYO machines commonly violated state's sanitary code due to their self-service design.
- c. Benefits local retailer population from "private clubs" taking away their cigarette sales.
- d. Still allows for the sale of RYO machines intended for home use.
- e. Public health goal is to reduce smoking by means of very cheap, unregulated cigarettes.
- f. 176 cities/towns have enacted this policy.

16. No tobacco product sales in health care institutions, including pharmacies. – IN NEW STATE LAW

- a. Bans tobacco sales in locations where health care services are provided, including doctor/dentist offices, hospitals, clinics, eye care providers and pharmacies.
- b. Boston first enacted this policy in 2009. To date, there have been no lawsuits.
- c. Includes supermarkets and "big box" stores that provide health care services. San Francisco was sued and lost the lawsuit because they carved out an exemption for supermarkets and "big box" stores.
- d. Public health goal is to de-couple tobacco sales from locations that, contrary to the many health consequences of tobacco use, provide health care services.
- e. Businesses covered by this policy can choose to discontinue the sale of tobacco or discontinue the provision of health care services.
- f. 169 cities and towns have enacted this policy, over 60% also include e-cigarettes in the sales ban.

17. No tobacco product sales in educational institutions, including colleges and universities.

- a. Bans tobacco sales in locations where educational services are also provided, including schools, trade schools, colleges and universities.
- b. Boston first enacted this policy in 2009. To date, there have been no lawsuits.
- c. Includes retailers whose landlord is a qualifying educational institution.
- d. Public health goal is to de-couple tobacco sales from locations that educate, for the most part, a population that is targeted by the tobacco industry.
- e. 165 cities and towns have enacted this policy, over half also include e-cigarettes in the sales ban.

18. Fining structure.

- a. Most municipalities follow the \$100/\$200/\$300 fining scheme found in the state law that bans sales to minors.
- b. Cities and towns can raise these fines beyond \$300 but cannot use non-criminal disposition (civil) ticketing for those higher amounts.
- c. State law bars local measures to eliminate these fines completely.
- d. A flat \$300 fine (or higher amount) for each level of violation is permissible. 21 municipalities have adopted it.

19. Penalty Assessment Protocol.

- a. Language determines whether the board of health can subjectively issue a permit suspension OR must issue a permit suspension.
- b. Using "shall" language requires the municipality to assess a permit suspension for the duration listed in the regulation if a violation of the regulation did in fact take place.
- c. Using "may" language permits the municipality to (1) assess a permit suspension according to the regulation, (2) to vary the length of the suspension or (3) not issue the suspension at all. Boards using this option should take heed to treat every violator equally to avoid legal action.
- d. Note that this decision only affects permit suspensions as the state law that provides for financial penalties does not provide for subjective local decision-making.

Municipal Tobacco Control Technical Assistance Program

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SECOND-HAND SMOKE POLICY SUMMARY LIST

The policy summaries listed below correspond to the checklists found in both the draft sales regulation and ETS regulation.
DJ Wilson, Mass. Municipal Association, djwilson@mma.org/617-426-7272

SECOND-HAND SMOKE

1. **Ban Smoking in "Smoking Bars"**
 - a. "Smoking Bar" is the term used in the state's Smoke-Free Workplace Law and includes both hookah bars and cigar bars.
 - b. Public health aim is to eliminate involuntary exposure to second-hand smoke and deter tobacco addiction.
 - c. Second-hand smoke problems arise when this type of smoking business is housed in a multi-use building.
 - d. Potential Sanitary Code violations may arise in hookah bars when smoking equipment is shared by multiple customers.
 - e. Restaurants and bars may complain that these establishments end the local "level playing field" regarding smoking.
 - f. 89 cities and towns have enacted this policy.

2. **Ban Smoking in "Retail Tobacco Stores"**
 - a. "Retail Tobacco Store" is the term used in the state's Smoke-Free Workplace Law and includes both tobacconists and smoke shops. These stores must not allow anyone under the minimum legal sales age to enter, and must not have a retail food permit.
 - b. Public health aim is to eliminate involuntary exposure to second-hand smoke and deter tobacco addiction.
 - c. Second-hand smoke problems arise when this type of smoking business is housed in a multi-use building.
 - d. Enactment of this policy does not interfere with the business but does require a customer wishing to test a tobacco product before purchase to do so outside the store.
 - e. 41 cities and towns have enacted this policy.

3. **Require a Smoke-Free Buffer Zone around Municipal Building Entrances**
 - a. Allows for residents to enter and exit municipal buildings without involuntary exposure to second-hand smoke.
 - b. Usual buffer zone distance is 15' to 25' depending on the physical layout of municipal buildings.
 - c. Penalties for municipal employees follow the guidelines found in employee handbooks or union contracts.
 - d. XX cities and towns have enacted this policy.

4. **Ban Smoking in "Membership Associations"**
 - a. "Membership Association" is the term used in the state's Smoke-Free Workplace Law and includes private clubs.
 - b. Restaurants and bars may complain that these establishments end the "level playing field" regarding smoking when the clubs act more like a public bar than a private club.
 - a. Athol's smoking ban for its private clubs was upheld by the Massachusetts Supreme Judicial Court in 2006 in a lawsuit brought by local private clubs.
 - c. 55 cities and towns have enacted this policy.

5. **Ban Smoking in Nursing Homes**
 - a. The state Smoke-Free Workplace Law permits smoking by nursing home residents under certain, narrowly-defined conditions.
 - b. Many nursing homes have made the corporate decision to be smoke-free.
 - c. Public health aim is to protect non-smoking residents, employees, caretakers and visitors from involuntary exposure to second-hand smoke.

6. **Ban Smoking in Hotels, Motels, B&B Rooms**
 - a. Public health aim is to protect hospitality industry workers from involuntary exposure to second-hand smoke and subsequent room guests from third-hand tobacco smoke that remains on furniture and carpeting.
 - b. Many large hotel chains have banned smoking through corporate policy.
 - c. Common areas, restaurants and banquet halls must be smoke-free by state law.
 - d. 14 cities and towns, included Boston, have enacted this policy.

7. **Ban Smoking in Outdoor Restaurant/Bar Locations**
 - a. Public health aim is to protect restaurant workers and patrons from involuntary exposure to second-hand smoke.
 - b. Variations on wording are to ban smoking in locations where waitstaff serve customers; to all locations covered by either the food service permit or liquor license; or anywhere on the property of the establishment.
 - c. Approximately 50 cities and towns, including Boston, have enacted this policy.

8. **Ban smoking in parks, playgrounds, athletic fields and beaches.**
 - a. Public health aims of a smoking ban are to reduce the involuntary exposure to second-hand smoke; protect small children from picking up used tobacco butts; and reduce tobacco-related litter.
 - b. Denormalizes the use of tobacco in front of youth, especially while engaged in athletic or healthy endeavors.
 - c. Signage strategically placed alerts smokers to not smoke and provides a means for non-smokers to ask smokers to refrain from smoking.
 - d. Approximately 34 cities/towns ban smoking in parks; 34 cities/towns ban smoking at playgrounds, 36 cities/towns ban smoking at beaches, 30 cities/towns ban smoking on non-school athletic fields.

9. **Ban e-cigarette use wherever smoking is banned.**
 - a. The contents of e-cigarette vapor is unknown as they are unregulated, especially true for homemade "nicotine juice".
 - b. Both the nicotine solution and the e-cigarette hardware are unregulated so the contents of the exhaled vapor is difficult to ascertain.
 - c. Absent a local prohibition, e-cigarettes can be used wherever smoking is either permitted or banned.
 - d. This policy does not ban e-cigarette use.
 - e. Approximately 78 cities and towns, including Boston, have enacted this policy.

F.D.A. Plans to Ban Most Flavored E-Cigarette Sales in Stores

By Sheila Kaplan

Nov. 8, 2018

WASHINGTON — The Food and Drug Administration plans to ban sales of most flavored e-cigarettes in retail stores and gas stations around the country, in an effort to reduce the popularity of vaping among young people.

The agency also plans to require age-verification measures for online sales to try to ensure that minors are not able to buy the flavor pods.

F.D.A. officials have been weighing measures to try to curb the use of flavored e-cigarettes among teenagers. A senior agency official said details of the plan would be announced next week, and that menthol and mint flavors would be exempt from the restrictions. The F.D.A. stopped short of including menthol flavors in the vaping sales ban, partly out of concern that some users would switch to traditional menthol-tobacco cigarettes.

In a recent interview that predated this plan, Dr. Scott Gottlieb, the agency's commissioner, said he considered youth vaping a pernicious public health problem.

"In order to close the on-ramp to e-cigarettes for kids, we have to put in place some speed bumps for adults," Dr. Gottlieb said.

Tobacco companies have fought cutting flavors from e-cigarettes, saying they are not aimed at youths but at adults who need them as a way to transition from tobacco cigarettes. But health advocates point to the packaging and youth appeal of a variety of flavors, including chicken and waffles, rocket Popsicle and unicorn milk as well as fruity tastes like mango.

Dr. Gottlieb has called the attacks on flavored products an "unfortunate trade-off" because they could restrict access to alternatives for adults trying to quit smoking. But, he also said parents should consider their children's use of e-cigarettes a serious health threat.

“I think that there’s a perception that e-cigarettes are a safer alternative for kids,” he said, “but it can lead to a lifelong addiction, and some percentage will migrate to combustible products.”

The agency’s plans were reported earlier by the Washington Post.

The F.D.A.’s crackdown on flavored e-cigarettes began earlier this year, as the numbers of teenagers vaping reached epidemic proportions and the popularity of such devices soared.

Juul, the blockbuster start-up, has been a primary target of agency regulators, lawmakers and concerned parents because of its dominant share of the market. Its device resembles a flash drive, and has had a stunning appeal among youths ever since it was introduced.

Dr. Gottlieb focused on Juul and several other major e-cigarette makers in September, warning them to stop marketing to teenagers or risk being banned. He set a 60-day deadline for the major companies to prove they could keep their devices away from minors, and that timetable ends this weekend.

At the same time, the F.D.A. also warned 1,100 retailers to stop selling the devices to minors, and issues fines to some of them.

The latest actions follow months of meetings between the F.D.A. and e-cigarette makers over how to prevent teenagers from getting hooked on their products.

Juul, which has more than 70 percent of the nation’s e-cigarette market and has become ubiquitous in many high schools and middle schools, submitted thousands of pages of marketing documents and related materials. But the regulators, not satisfied, then visited the company’s San Francisco headquarters in September and seized more.

The four other products facing the 60-day deadline were RJR Vapor Co.’s Vuse, Imperial Brands’ blu and devices made by Logic. None of the companies responded to immediate requests for comment.

RJR, Imperial and Altria are all major tobacco companies, which along with other industry heavyweights have viewed e-cigarettes as critical to their survival now that smoking rates have declined to their lowest levels in the United States.

In a new report, the Centers for Disease Control and Prevention said that the cigarette smoking rate in the United States dropped to an estimated 14 percent of adults in 2017. That is a 67-percent decline from 1965, when a national health survey began tracking smoking rates.

In a statement last week, Dr. Gottlieb said that some of the companies he had met with also seemed to support raising the minimum age for buying tobacco products sales to 21 years.

Last year, Dr. Gottlieb gave the e-cigarette manufacturers five more years to meet standards that they prove their products are a safe alternative to tobacco cigarettes. The agency is also considering requiring lower levels of nicotine in cigarettes, although some companies have questioned how much authority the F.D.A. has to impose tougher limits.

A version of this article appears in print on Nov. 9, 2018, on Page A21 of the New York edition with the headline: F.D.A. to Ban Sales of Most Flavored E-Cigarettes in Stores. Order Reprints | Today's Paper | Subscribe

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COALITION for RESPONSIBLE RETAILING
We comply because we care

November 14, 2018

Uxbridge Board of Health
c/o Ms. Kristin Black, Director
21 South Main Street
Uxbridge, MA 01569

Via Email to: KBlack@uxbridge-ma.gov

Re: November 14, 2018 Hearing on Tobacco Regulations

Dear Ms. Black & Uxbridge Board of Health Members:

As the Board of Health continues to consider amendments to Uxbridge's tobacco regulations, we urge you to consider the significant negative impacts the proposed changes would have on local retailers. While ostensibly designed to prevent youth tobacco usage, a goal CRR wholeheartedly supports, a ban on the sale of flavored tobacco products in convenience stores and minimum pricing restrictions for cigars would simply drive business away from Uxbridge retailers while failing to curb youth tobacco access.

Our retailers in Massachusetts towns with existing flavor bans have already felt a negative impact on their sales. One retailer in Agawam reported a decrease of approximately 15% of total sales once the town implemented regulations like those currently under consideration in Uxbridge. We have seen similar losses in other towns, with many retailers suffering total sales reductions anywhere from 5-15%.

These losses are highly localized. While the retailer in Agawam saw a 15% reduction in sales after the flavor ban was implemented, a retailer owned by the same proprietor in neighboring West Springfield, which does not have a flavor ban, saw their weekly sales volume *increase* by nearly 30%. Again, this highlights how local flavor bans fail to solve the issues identified by the Board of Health. Tobacco sales are not reduced as a whole by the adoption of local flavor bans – they are simply redistributed to towns that do not have such policies.

It is already illegal for retailers to sell tobacco or e-cigarette products to minors. Uxbridge retailers take the law seriously – their livelihoods depend on it. According to the FDA, which conducts regular inspections of convenience stores in which a minor attempts to purchase tobacco products, Uxbridge retailers have a compliance rate of about 94%. This is higher than the state average and demonstrates a clear commitment to following the law. To put it simply, convenience stores are not selling tobacco products to minors. Why, then, should these legal, age-restricted products be removed from their shelves?

Flavor bans and minimum pricing restrictions for cigars drive business away from honest, hardworking retailers who were already highly compliant with the law – yet they do not prevent

youth from accessing tobacco products. We hope you will consider the welfare of Uxbridge retailers as you consider amending the town's tobacco regulations. Please do not hesitate to reach out with any questions.

Sincerely,

Dennis Lane
Executive Director
Coalition for Responsible Retailing



DML
11:30
Wed 12-19-18
GFC