

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

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

Minutes of the Uxbridge Board of Health meeting held on Wednesday, November 14, 2018 at 5:30pm in the Selectmen's Meeting Room, 21 South Main Street, Uxbridge, MA

Present: Michael Morrissette, Chair, David Tapscott, Vice Chair, Joann Lindenmayer, Member.
Also present, Kristin Black, Health Agent and Nancy Centrella, Admin. Assistant

Meeting to order: The time being 5:31 pm and the meeting duly posted with a quorum present, Chairman Morrissette called the meeting to order.

NEW BUSINESS

1. Public Hearing (continued from 10/16/18) on Revisions to Board of Health Regulations, Article XVIII: Regulation Restricting the Sale of Tobacco Products

Discussion by community members:

Dennis Lane, retailer representative, spoke about the impact this will have on small retailers. He said the youth will still be able to purchase on-line products, and he believes that physically checking I.D.s is the only way to stop kids from buying these products. He asked the Board to wait for the FDA to pass these standards before implementing them in town.

Cheryl Sbarra, MAHB, said there is currently no timeline for the FDA to enact these laws across the country and doing so locally is the best option. She spoke about flavored products in particular, being the most popular among kids. They are concept flavors, having fancy titles for marketing purposes instead of the actual name of the flavor.

Nadeem Sattar, retailer, said that these laws were passed in Somerset and Woonsocket and then reversed because of the severe impact on the businesses. Cheryl stated that the laws in Somerset were reversed within 1 month of being passed because of lack of community support. The Board of Health were also acting as the Board of Selectmen at the time.

Henry Lane, Attorney, said that there is an enforcement problem in the town. He asked that the regulations remain the same, and for the town to work on enforcing the current laws. Cheryl disagreed saying that it is an exposure issue.

Motion: *Joann Lindenmayer moved to close the public hearing. David Tapscott seconded and the motion passed unanimously with a vote of 3-0-0.*

Discussion - Kristen made some slight revisions in the summary and violation sections of the regulation. Also the effective date will be 12/30/2018. Joann said that she is convinced by the science that the best way to protect the health of minors is to take the products out of sight. David agreed with Joann and said that there is too much unknown in this very risky business. The Board's primary responsibility is for the health of the public. Mike can understand both sides of the issue. There are no documented compliance issues to date. Seems unfair that the over 21 stores will have a monopoly on these products. The Board may re-visit banning the products all together in the future.

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***Motion:** David Tapscott moved to adopt the Revised Board of Health Regulation, Article XVIII (revision date 11/13/2018) with effective date 12/30/2018. Joann Lindenmayer seconded and the motion passed with a vote of 2-1-0.*

2. Public Hearing (continued from 10/16) on 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 - There was no public comment.

***Motion:** David moved to close the public hearing regarding Article XXIV. Joann Lindenmayer seconded and the motion passed unanimously with a vote of 3-0-0.*

Discussion – Kristen used the towns of Hudson and Framingham as a guideline to include all smoking products (e-cigarettes, thc, marijuana, etc.) This will include all municipally owned and maintained buildings and parks and all outdoor eating establishments. Individuals and/or establishments can be fined for violations. Joann commented that the Board should re-visit this in the future to discuss the direct impact of smoking these products.

***Motion:** Joann Lindenmayer moved to accept the revised Board of Health Regulation, Article XXIV (revision date 11/13/2018). David Tapscott seconded and the motion passed unanimously with a vote of 3-0-0.*

3. Staffing Update – Nancy Centrella was welcomed as the Board of Health Administrative Assistant.

4. Emergency Dispensing Site Drills and Training

Discussion – Joann and Kristen met with JJ Burke from the Worcester Regional Office of the Board of Health. They are planning a table top exercise in January, possibly the 17th or 24th, to prepare for emergency situations. Joann requested state funds for this project. And we will be eligible for grants and possibly rebates from MIIA as well. All town Depts. will be involved as well as the press. It will be done at the High School with a very large audience. The drill will be followed with our Emergency Dispensing Site portion which is state required. We will get a full report to see where we may lack and what we need to do to improve. A notice has been drafted for the town Depts.

5. Schedule 2019 Meeting Dates – 1/16/2019, 2/13/2019, 3/20/2019, 4/17/2019, 5/15/2019, 6/19/2019, 7/17/2019, 8/21/2019, 9/18/2019, 10/16/2019, 11/20/2019, 12/18/2019

6. Termination of Administrative Consent Order for Green Acres Reclamation Project by MassDEP
Information from Mark Baldi, MA DEP will be tracked in our office as it comes in. They are enforcing the closure of this site and the well monitoring.

OLD BUSINESS

1. Clark University Research Plan: Uxbridge Aquifer and Atlas Project- David spoke about the sampling of water from the surface and a couple of the wells will be part of the data in the atlas. The broad scope of the atlas is still a work in progress.

2. Municipal Vulnerability Project (MVP) Action Grant planning – Joann concluded the MVP process and Susan Franz has taken the chair position. They are working on the grant proposal and waiting on a report from CMRPC. The grant will focus on 4 key areas: (1) public health emergency plan; (2) water supply expanded capacity; (3) bi-laws and guidelines; (4) communication. There will be 1 more

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meeting on this. David and Joann will be drafting some elements for the public health part of it and Mike Gallerani will put it in the grant format. Pat Malone has been offered the internship role to help with the grant as well.

3. **Flu Clinic counts - Updates on Recycling and Sustainability Committee** – Salmon VNA ran 2 clinics this year. There were 20-30 vaccines administered at the Senior Center and 93 vaccines for the school community. JJ Burke said that the town of Sandwich did a clinic as a “drive-up” and were able to administer 1200 vaccines. We will work on better promoting for next year so we can continue to grow.
4. **Updates on Recycling and Sustainability Committee** – David said that the committee presented to the BOS, and they talked about possibly becoming a standing committee. The Green Community Grant is in and the decision should be made in January. Kristen spoke to the Town Manager and Mike Gallerani to take the lead if we should get the grant awarded to us. The Green Team is looking into a textile program with Bay State Textiles. We would receive points for this through MA DEP which may lead to more money. The committee will march in the parade on “First Night.” There will be recycle totes in the common this year that we bought with the funds we received from SMRP DEP. The totes will be used for all future events as well.

ANY OTHER MATTER THAT MAY LAWFULLY COME BEFORE THE BOARD

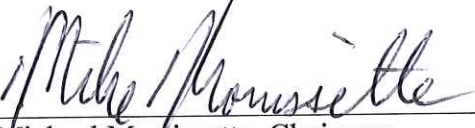
David and Joann will be attending the MAHB meeting on Saturday, November 17th.

ADJOURNMENT 6:50 pm

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

Attachments


- *Article XVIII (proposed revisions for Public Hearing continued to Nov. 14, 2018)*
- *Article XXIV (proposed revisions for Public Hearing continued to Nov. 14, 2018)*



Michael Morrissette, Chairman



David Tapscott, Vice Chairman



Joann Lindenmayer, Member



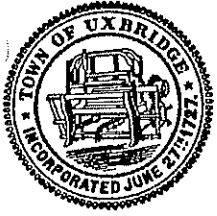
Uxbridge Town Hall
21 South Main Street, Room 204
Uxbridge, MA 01569
508-278-8600 x8 p
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**TOWN OF UXBRIDGE
BOARD OF HEALTH**

11/14/2018

Sign-In Sheet

	NAME (please PRINT)	ADDRESS
1.	Dennis Lane	CR2
2.	Chery Sparr	
3.	Henry Lane	100 Main St Whitman -
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		



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

Article XVIII (proposed revisions for Public Hearing continued to Nov. 14, 2018)

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 throat¹;

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

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

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke⁶; Whereas 18.1 percent of current smokers aged <18 years reported that they usually directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent⁷;

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

² CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgf/2010/.

³ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

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

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

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

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

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives⁸;

Whereas cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁹;

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

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

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

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes¹³, largely because these flavored products were marketed to youth and young adults¹⁴, and younger smokers were more likely to have tried these products than older smokers¹⁵, 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;

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

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

¹⁰ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

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

¹² U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ 21 U.S.C. § 387g.

¹⁴ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁵ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are “starter” products that help establish smoking habits that can lead to long-term addiction¹⁶;

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

Whereas the U.S. 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 2014¹⁸;

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them¹⁹;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”²⁰;

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 one²¹;

Whereas according to the CDC’s youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013²²;

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 cigarettes²³;

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

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

¹⁶ Food and Drug Administration. 2009. *Guidance for Industry and FDA Staff: General Questions and Answers on the Ban of Cigarettes that Contain Certain Characterizing Flavors (Edition 2)* <https://www.fda.gov/downloads/TobaccoProducts/Labeling/ProductsIngredientsComponents/UCM195420.pdf>. U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁷ See fn. 3 at p. 85.

¹⁸ Centers for Disease Control & Prevention. 2015. “Tobacco Use Among Middle and High School Students — United States, 2011–2014,” *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

¹⁹ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

²⁰ 310 CMR 30.136

²¹ 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>.

²² See fn. 7.

²³ King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

Whereas the 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”²⁴.

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

B. Authority:

This regulation is promulgated pursuant to the authority granted to the 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 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.

²⁴ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

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.

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

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco 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.

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 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 Uxbridge Board of Health. Only owners of establishments with a permanent, non-mobile location in 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 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. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Uxbridge Board of Health annually. All such permits shall be renewed annually by December 31st each year.
5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

6. 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.
 7. 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.
 8. 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.
 9. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§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.
10. 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 by the current permit holder if the applicant 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 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 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 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 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 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 violation, a fine of three hundred dollars (\$300.00).
 - b. In the case of three violations or repeated, egregious violations of this regulation within a 36 month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.
2. Failure 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. Multiple tobacco product sales permit suspensions shall not be served concurrently.
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. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

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.

S. Separate Violations: Each day any violation exists shall be deemed to be a separate offense.

T. Enforcement:

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

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

U. 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.

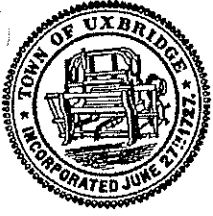
V. Effective Date:

This regulation shall take effect on December 30, 2018.

Michael Morrisette, Chairman

Dr. David Tapscott, Vice Chairman

Dr. Joann Lindenmayer, Member



TOWN OF UXBRIDGE
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Article XXIV (proposed revisions Nov. 2018)

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

SECTION 1: Statement of Purpose

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

SECTION 2: 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 November 14, 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, THC and synthetic cannabinoids 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.

SECTION 3: 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.

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, marijuana, or THC to the user, or relies on vaporization of any liquid or solid nicotine, marijuana or THC. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 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.

Marijuana 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 marijuana is delta-9-tetrahydrocannabinol, commonly referred to as THC.

Municipal Building: Any building or facility owned, operated, leased or occupied by the municipality.

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 Uxbridge 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 Uxbridge, or bar rooms licensed and/or permitted by the Board of Health and/or the Board of Selectmen of the Town of Uxbridge

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 or 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 may be accessed.

Smoking or smoke: the lighting of a product designed to be combusted and inhaled (including but not limited to tobacco, marijuana, THC and synthetic cannabinoid) or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Synthetic cannabinoid: human-made mind-altering chemicals that are either sprayed on dried, shredded plant material so they can be smoked or sold as liquids to be vaporized and inhaled in e-cigarettes and other devices. These products are also known as herbal or liquid incense.

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.

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

SECTION 4: Smoking Prohibited

- a) It shall be the responsibility of the employer to provide an environment free of smoke free environment for all employees working in an enclosed workplace and those workplaces listed in subsection (c) below.
- b) Smoking 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 M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
 1. Public Places
 2. Public Transportation Vehicles
 3. Municipal-owned and/or municipal-maintained parks, open spaces, trails, playgrounds, athletic fields and beaches
 4. the area within twenty-five (25) feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such twenty-five (25) foot area
 5. all outdoor spaces 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 M.G.L. Ch. 270, §22 and Section 4 of this regulation.

SECTION 5: Enforcement

- a) Any individual who smokes in an area in which smoking is prohibited under Section 4, shall be subject to a fine of fifty dollars (\$50.00) per offense.
- b) Any person having control of a premises upon which smoking is prohibited under the authority of this regulation, and who allows others to violate this regulation shall be subject to the following fines under Section 4. All penalties, as listed below, shall be applied to the holder of any permit, issued by the Town of Uxbridge where such permit exists, or to the person, firm, corporation, establishment or agency violating any regulation, where such a permit does not exist.
 1. \$100 for the first violation;
 2. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
 3. \$300 for a third or subsequent violation occurring within two (2) years of the second 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, and Uxbridge Police Department.
- e) Violations of Section 4 shall be disposed of by a civil penalty using the noncriminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- f) 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.

g) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 7: 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.

SECTION 8: Effective Date

This regulation shall take effect on December 31, 2018.

Michael Morrissette, Chairman

Dr. David Tapscott, Vice Chairman

Dr. Joann Lindenmayer, Member

