

Great Barrington Board of Health

Regulation of the Great Barrington Board of Health Restricting the Sale of Tobacco Products

Effective Date: January 2, 2018

These regulations replace any and all prior Youth Access to Tobacco Products regulations.

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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 studies conducted in 2009 found that among the 15.7% of students nationwide who smoked cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

Whereas 59% of high school smokers in Massachusetts have tried flavor cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year olds who smoked cigars reported smoking cigar brands that were flavored;³

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General of the United States has found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,⁵ and that it is addiction to nicotine that keeps youths smoking past adolescence.⁶

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁷;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from:

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

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

³ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., Tob Control, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

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

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

⁶ Health and Human Services. 2014. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 2014 U.S. Surgeon General’s Report Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁷ 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.

Whereas national survey data have shown that more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;⁸

Whereas the Institute of Medicine (IOM) has concluded that raising the minimum age of legal access to tobacco products to 21 will reduce tobacco initiation, particularly among adolescents aged 15 – 17, and will improve health across the lifespan and save lives⁹.

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent ;¹⁰

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 lives¹¹.

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010¹² and many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth¹³;

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹⁴ largely because these flavored products were marketed to youth and young adults,¹⁵ and younger smokers were more likely to have tried these products than older smokers¹⁶, and 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 SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human Services (HHS). *The Health Consequences of Smoking-50 Years of Progress. A Report of the Surgeon General*, 2014.

⁹ 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.

¹⁰ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

¹¹ 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.

¹² Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

¹³ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

¹⁴ 21 U.S.C. § 387g.

¹⁵ 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.

¹⁶ 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 considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁷

Whereas the U.S. Centers for Disease Control and Prevention (“CDC”) has reported that electronic cigarette use among middle and high school students tripled from 2013 to 2014;¹⁸

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;¹⁹

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in many flavors that appeal to youth, such as cotton candy and bubble gum;²⁰

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste” (310 CMR 30.136);

Whereas in a lab analysis conducted by the U.S. Food and Drug Administration (“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 was 10.8% in 2013;²²

Whereas data from the National Youth Tobacco Survey indicated that more than two-fifths of U.S. middle and high school smokers reported using flavored little cigars or flavored cigarettes;²³

¹⁷ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

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 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.

²⁰ Cameron JM, Howell DN, White JR, et al. 2013. “Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

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 ²² CDC (2013) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

Whereas in Massachusetts, as of 2013, youth use of cigars and smokeless tobacco (12.3%) was higher than the rate of current cigarette use (10.7%) and had remained elevated since 2009²⁴;

Whereas research has shown 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%²⁵;

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”²⁶.

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

A. Authority

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

B. Definitions

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

- 1) **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 is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Great Barrington Board of Health.
- 2) **Blunt Wrap**: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.
- 3) **Board**: The Town of Great Barrington Board of Health and its legally designated agents.
- 4) **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.
- 5) **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

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.

²⁴ Commonwealth of Massachusetts, Data Brief, Youth Tobacco Use in Massachusetts: Survey Results from 1993 to 2013.

²⁵ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.gov/pubmed/21809109.

²⁶ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

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.

- 6) **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 Laws, Chapter 64C, Section 1, Paragraph 1.
- 7) **Commercial Roll-Your-Own (RYO) Machine**: A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into tobacco products. Home-use RYO machines are not Commercial Roll-Your-Own machines.
- 8) **Component Part**: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- 9) **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.
- 10) **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.
- 11) **Distinguishable**: Perceivable by either the sense of smell or taste.
- 12) **Educational Institution**: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
- 13) **Employee**: Any individual who performs services for an employer.
- 14) **Employer**: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.
- 15) **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.
- 16) **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.

- 17) **Liquid Nicotine Container**: A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.
- 18) **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 stated price, and before the application of any discounts or coupons.
- 19) **Minimum Legal Sales Age (MLSA)**: The age an individual must be before that individual can buy or be sold a tobacco product in the Town.
- 20) **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.
- 21) **Permit Holder**: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.
- 22) **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.
- 23) **Retail Tobacco Store**: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Board of Health.
- 24) **Self-Service Display**: Any display from which customers may select a tobacco product, as defined herein, including any U.S. FDA- Approved Cessation Product Containing Nicotine, without assistance from an employee or store personnel.
- 25) **School**: Public or private elementary or secondary school.
- 26) **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.
- 27) **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 Laws 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".
- 28) **Tobacco Product**: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars,

chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, 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.

- 29) **Tobacco Sales Certification Training**: A certification training program, approved by the Board of Health, that requires a training which must be successfully completed by all tobacco product sales clerks engaged in the sale or distribution of tobacco products directly to the consumer in Great Barrington. For the purposes of this section, the Great Barrington Board of Health has designated the Tri-Town Health Department to administer the tobacco retailer certification program.
- 30) **Tobacco Sales Clerk**: An individual, employer, employee, retail store manager, the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers who can produce documentation that he/she maintains a valid tobacco product sales certification.
- 31) **Vending Machine**: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, or any other tobacco product, as defined herein, including any U.S. FDA- Approved Cessation Product Containing Nicotine.

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

- 1) **Minimum Legal Sales Age**: 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 **Great Barrington** is **21**.
- 2) **Required Signage**:
 - a. In conformance with and in addition to Massachusetts General Laws, 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 Great Barrington 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.
 - b. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Great Barrington Board of Health that discloses current referral information about smoking cessation.
- 3) **Identification**:

Each person selling or distributing tobacco products shall verify, for each transaction, the age of the purchaser by means of government-issued photographic identification containing the bearer's date

of birth and showing that the purchaser is of the minimum legal sales age. See section D1 of these regulations for the minimum legal age to purchase tobacco products.

- 4) All retail sales of tobacco products must be face-to-face between the seller and the buyer.

E. Tobacco Product Sales Permit

- 1) No person shall sell or otherwise distribute tobacco products, as defined herein, within Great Barrington without first obtaining a Tobacco Product Sales Permit issued annually by the Great Barrington Board of Health. Only owners of establishments with a permanent, non-mobile location in the Town of Great Barrington are eligible to apply for a permit and to sell tobacco products, as defined herein, at the specified location, in the Town of Great Barrington.
- 2) As part of the initial Tobacco Product Sales Permit application process, the applicant will be provided with the Great Barrington Board of Health regulations. Each applicant is required to sign a statement declaring that the applicant has read said regulations 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 these regulations.
- 3) Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.
- 4) The fee for a Tobacco Product Sales Permit shall be determined by the Great Barrington Board of Health annually.
- 5) A separate permit is required for each retail establishment selling tobacco products, as defined herein.
- 6) Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
- 7) 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 for the applicable location are satisfied in full.
- 8) Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with these regulations.
- 9) A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all penalties issued hereunder and the time period to appeal the penalties has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
- 10) 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 §R.5.

F. 9. Maximum Number of Tobacco Product Sales Permits.

- a. At any given time, there shall be no more than **twelve (12)** Tobacco Product Sales Permits issued in **Great Barrington**. 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.

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

G. Cigar Sales Regulated

- 1) No person shall sell or distribute or cause to be sold or distributed a single cigar.
- 2) No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
- 3) This Section shall not apply to:
 - a) The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
 - b) A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the Great Barrington Board of Health.
- 4) The Great Barrington 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.

H. Sale of Flavored Tobacco Products Prohibited:

- 1) No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product or tobacco product containing characterizing flavor except in smoking bars and adult only retail tobacco stores.

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.

Paragraphs 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 shall 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 Great Barrington 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 or nicotine delivery products, as defined herein, including any U.S. FDA-approved cessation product containing nicotine, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

L. Tobacco Vending Machines:

All tobacco and nicotine delivery product vending machines are prohibited.

M. Prohibition of the Sale of Tobacco Products by Health Care Institutions

No health care institution located in the Town of Great Barrington 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.

N. Prohibition of the Sale of Tobacco Products by Educational Institutions

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

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

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

P. Certification

1. No person shall sell any tobacco product without first successfully completing the approved tobacco sales certification training and obtaining confirmation of certification. The definition of an approved training program is contained in section C of these regulations.
2. New employees have thirty (30) consecutive days to successfully complete an approved tobacco product sales certification training. Employers must provide documentation confirming new hires if requested by the Board of Health.

Q. Incorporation of Attorney General Regulation 940 CMR 21.00

The sale or distribution to 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”).

R. Violations pertaining to the Tobacco Sales Clerk

1. It shall be the responsibility of the Tobacco Sales Clerk to ensure compliance with all sections of these regulations pertaining to his or her distribution of tobacco products. The violator shall receive:
 - a. In the case of a first violation:
Tobacco Sales Clerk, a penalty of fifty dollars (\$50.00) and tobacco products sales certification shall be suspended for seven (7) consecutive business days, and must provide proof that he/she has signed up for the next available tobacco retailer training within seven (7) consecutive business days before selling tobacco products. Completion of training required within thirty (30) consecutive business days unless there is written consent from the Great Barrington Board of Health to extend the time period.
 - b. In the case of a second violation within 24 months of the date of the first violation:
Tobacco Sales Clerk, a penalty of one hundred dollars (\$100.00) and tobacco product sales certification shall be suspended for thirty (30) consecutive business days, and must provide proof that he/she has signed up for the next available tobacco retailer training within thirty (30) consecutive business days before selling tobacco products. Completion of training required within thirty (30) consecutive business days unless there is written consent from the Great Barrington Board of Health to extend the time period.
 - c. In the case of a third violation within a 24 month period:
Tobacco Sales Clerk, a penalty of one hundred and fifty dollars (\$150.00) and tobacco product sales certification shall be suspended for three hundred and sixty five (365) consecutive days.
2. Refusal to cooperate pursuant to these regulations shall result in the suspension of the tobacco product sales certification for thirty (30) consecutive business days.
3. In addition to the monetary penalties set above, any Tobacco Sales Clerk who engages in the sale or distribution of tobacco products directly to a consumer while his or her certification is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.
4. The Great Barrington Board of Health shall provide prior written notice of the intent to suspend tobacco product sales certification, which notice shall contain the reasons therefor. A hearing may be requested in writing within seven (7) days of receipt of the notice. The Tobacco Sales Clerk or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and the reasons therefore in writing. The Great Barrington Board of Health after a hearing may suspend the tobacco product sales certification.
5. Any Tobacco Sales Clerk who does not pay the assessed penalty within twenty-one days from issuance may be subject to further enforcement proceedings.

S. Violations pertaining to the permit holder and/or his or her business agent

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of these regulations pertaining to his or her distribution of tobacco products. The violator shall receive:
 - a. In the case of a first violation:
Permit holder and/or his or her business agent, a penalty of two hundred fifty dollars (\$250.00).
 - b. In the case of a second violation within 24 months of the date of the first violation:
Permit holder and/or his or her business agent, a penalty of three hundred fifty dollars (\$350.00) and the tobacco products sales permit shall be suspended for seven (7) consecutive business days.
 - c. In the case of third violation within a 24 month period:
Permit holder and/or his or her business agent, a penalty of five hundred dollars (\$500.00) and the tobacco product sales permit shall be suspended for fourteen (14) consecutive business days.
 - d. In the case of fourth violation within a 24 month period:
Permit holder and/or his or her business agent, a penalty of five hundred dollars (\$500.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.
 - e. In the case of fifth violation within a 24 month period:
Permit holder and/or his or her business agent, a penalty of seven hundred and fifty dollars (\$750.00) and the tobacco product sales permit shall be suspended for three hundred and sixty five (365) consecutive business days.
2. Refusal to cooperate pursuant to these regulations shall result in the suspension of the tobacco product sales permit for thirty (30) consecutive business days.
3. Any permit holder who allows a sales clerk to sell or distribute tobacco products directly to a consumer without first obtaining a tobacco products sales certification shall be subject to a penalty of one hundred (\$100.00) dollars.
4. In addition to the monetary penalties 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.
5. The Great Barrington Board of Health shall provide prior written notice of the intent to suspend a tobacco product sales permit, which notice shall contain the reasons therefor. A hearing may be requested in writing within seven (7) days of receipt of the 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's decision and the reasons therefor in writing. The Great Barrington Board of Health after a hearing may suspend the tobacco products sales permit. All tobacco products shall be removed from the retail establishment upon suspension of the tobacco product sales permit. Failure to remove all tobacco products shall constitute a separate violation of these regulations.
6. Any permit holder who does not pay the assessed penalty within twenty-one (21) days from issuance may be subject to further enforcement proceedings.

T. Non-Criminal Disposition

Whoever violates any provision of these regulations may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D. Each day any violation exists shall be deemed to be a separate offense.

U. Enforcement

Enforcement of these regulations shall be by the Great Barrington Board of Health or its designated agent(s).

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

V. 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.

W. Effective Date

These regulations shall take effect on January 2, 2018

Ruby Chang , MD

Michael Lanoue

Peter Stanton

Date Regulation Approved: October 12, 2017