



Serving the Towns of Alford, Great Barrington, Lee, Lenox,
 Monterey, Mount Washington, New Marlborough, Otis,
 Sandisfield, Sheffield, Stockbridge and Tyringham

"The mission of the Southern Berkshire Public Health Collaborative is to leverage partnerships in order to provide quality public health services that directly improve the health and well-being of the entire community."

**SBPHC FY23 Q3 QUARTERLY REPORT
 JANUARY-MARCH 2023**

This quarterly report includes the following for each town:

- MAVEN Events: table by town
- Blood pressure clinics: list by town and number served.
- Disease/Injury Prevention Projects
- SCOWG Updates
- Community Engagement

MAVEN EVENTS

MAVEN (Massachusetts Virtual Epidemiological Network) is monitored for emerging trends. Diseases requiring immediate follow-up and those related to high-risk disease or congregate setting spread are contacted by the public health nurse per Massachusetts General Law.

TOWN	DISEASE	JAN	FEB	MAR	FY '23 TOTAL TO DATE
ALFORD	SARS-COV-2	1	1	1	10
	MONTHLY TOTAL	1	1	1	

GREAT BARRINGTON	BABESIOSIS	0	0	0	2
	CALCIVIRUS/NOROVIRUS	0	2	3	5
	CAMPYLOBACTERIOSIS	0	0	0	3
	HEPATITIS C	0	1	0	2
	HUMAN GRANULOCYtic ANAPLAMOSIS	0	0	0	3
	INFLUENZA	9	0	3	45
	MALARIA	0	0	0	1
	SALMONELLOSIS	0	0	0	1
	SARS-COV-2	45	27	14	385
	TUBERUCLOSIS	2	2	0	7
	YERSINIOSIS	0	0	0	1
	MONTHLY TOTAL	56	32	20	

TOWN	DISEASE	JAN	FEB	MAR	FY '23 TOTAL TO DATE
LEE	CALCIVIRUS/NOROVIRUS	0	1	1	2
	CAMPYLOBACTERIOSIS	0	0	0	2
	CRYPTOSPORIDIOSIS	0	0	0	1
	GIARDIASIS	0	0	0	1
	HEPATITIS C	0	0	0	2
	HUMAN GRANULOCYtic ANAPLASMOSIS	0	0	0	1
	INFLUENZA	4	4	3	55
	SALMONELLOSIS	0	0	0	1
	SARS-COV-2	18	16	13	241
	STREPTOCOCCUS PNEUMONIAE	1	0	0	1
	TUBERCULOSIS	3	0	0	4
MONTHLY TOTAL		26	21	17	

LENOX	BABESIOSIS	0	0	0	1
	CALCIVIRUS/NOROVIRUS	1	1	0	3
	CAMPYLOBACTERIOSIS	0	0	0	2
	HEPATITIS C	0	0	0	1
	INFLUENZA	5	2	0	61
	SALMONELLOSIS	0	0	0	1
	SARS-COV-2	32	13	10	251
	TUBERCULOSIS	0	0	0	1
MONTHLY TOTAL		38	16	10	

MONTEREY	CAMPYLOBACTERIOSIS	0	0	0	1
	INFLUENZA	1	0	0	4
	SARS-COV-2	0	0	0	31
MONTHLY TOTAL		1	0	0	

MOUNT WASHINGTON	SARS-COV-2	2	0	0	6
MONTHLY TOTAL		2	0	0	

NEW MARLBOROUGH	CALCIVIRUS/NOROVIRUS	0	0	1	2
	CAMPYLOBACTERIOSIS	0	0	0	1
	HUMAN GRANULOCYtic ANAPLASMOSIS	0	0	0	1
	INFLUENZA	3	0	0	9
	SARS-COV-2	3	6	5	51
MONTHLY TOTAL		6	6	6	

OTIS	HEPATITIS C	0	0	0	1
	INFLUENZA	9	0	0	10
	SALMONELLOSIS	0	1	0	1
	SARS-COV-2	3	5	4	67
MONTHLY TOTAL		12	6	4	

TOWN	DISEASE	JAN	FEB	MAR	FY '23 TOTAL
SANDISFIELD	CALCIVIRUS/NOROVIRUS	0	1	0	1
	INFLUENZA	5	0	0	11
	SARS-COV-2	6	0	2	28
	TUBERCULOSIS	0	0	0	1
MONTHLY TOTAL		11	1	2	

SHEFFIELD	BABESIOSIS	0	0	0	1
	CALCIVIRUS/NOROVIRUS	0	0	0	2
	CAMPYLOBACTERIOSIS	0	0	0	1
	GIARDIASIS	0	0	0	1
	HUMAN GRANULOCYTTIC ANAPLASMOSIS	0	0	0	2
	INFLUENZA	1	1	0	74
	SALMONELLOSIS	0	0	0	1
	SHIGA TOXIN PRODUCING ORGANISM	0	0	0	1
	SARS-COV-2	31	4	5	142
	TUBERCULOSIS	0	0	0	2
	YERSINIOSIS	0	0	0	4
MONTHLY TOTAL		32	5	5	

STOCKBRIDGE	CALCIVIRUS/NOROVIRUS	1	1	0	2
	CRYPTOSPORIDIOSIS	0	0	0	1
	INFLUENZA	0	0	0	9
	SALMONELLOSIS	0	0	0	1
	SARS-COV-2	3	3	1	69
MONTHLY TOTAL		4	4	1	

TYRINGHAM	INFLUENZA	0	0	0	1
	SALMONELLOSIS	0	0	0	2
	SARS-COV-2	1	1	1	10
MONTHLY TOTAL		1	1	1	

SBPHC PHN COMMUNITY BLOOD PRESSURE CLINICS

The SBPHC PHN provides blood pressure clinics around the region each month. New Marlborough is the newest town to start offering blood pressure clinics, which started in February.

SITE	SCHEDULE	JAN	FEB	MAR
New Marlborough COA	3rd Tuesday	0	3	1
Lee Senior Center	Last Tuesday	2	Canceled	8
Lenox Community Center	First Tuesday	4	5	7
Sandisfield Senior Center	3rd Wednesday	6	8	Canceled
Otis Senior Center	Last Wednesday	8	5	4
Sheffield Senior Center	2nd Thursday	5	8	6
Claire Teague Senior Center	3rd Thursday	5	9	3
Monterey Community Center	3rd Thursday	9	5	3

SBPHC DISEASE INJURY/ PREVENTION PROJECTS

VACCINE PROGRAM

The collaborative participated in the Get Booster campaign through DPH. \$75 gift cards were offered to those that had not received an updated COVID booster shot since September of 2022. The program ran from February 6th- March 31st and 124 people received their booster shot through the collaborative. We have given a total of 1,514 COVID booster shots and 1,474 flu shots from 9/22/2022-3/28/2023.

<u>Age Group</u>	<u># Vaccines</u>
5-11 yr.	7
12-18 yr.	11
19-64 yr.	78
65+ yrs.	28

<u>Town</u>	<u># Vaccines</u>	<u>Town</u>	<u># Vaccines</u>
Adams	4	Richmond	2
Becket	2	Sheffield	15
Cheshire	5	Springfield	1
Dalton	1	Stockbridge	1
Egremont	2	Tyringham	1
Great Barrington	11	W Springfield	1
Lee	7	W Stockbridge	2
Lenox	17	Westfield	2
N Adams	7	New Haven, CT	1
Otis	10	Hillsdale, NY	5
Pittsfield	25	Stephentown, NY	2

CAR SEAT PROGRAM

Car seat installation and safety checks are available by appointment. Free car seats are available through the Collaborative. The free car seats are through the grant programs of Toyota’s Buckle Up for Life/ Cincinnati Children’s Hospital program and the Massachusetts Office of Grants and Research. To schedule a free car seat inspection or to receive a free car seat contact Jill Sweet at jill@tritownhealth.org or (413) 717-7209.

RESIDENT	JAN	FEB	MAR
ASHLEY FALLS/SHEFFIELD	2	2	2
GREAT BARRINGTON	4	0	0
LENOX	3	3	1
PITTSFIELD	4	0	4
STOCKBRIDGE	0	5	0
LEE	0	0	1
DALTON	0	0	2
CHESHIRE	0	0	1
SPRINGFIELD	0	0	1
ANDOVER	0	0	1
TEWKSBURY	0	0	8
LOWELL	0	0	2
LANESBOROUGH	0	0	2

To date, 84 car seats have been distributed, including:

Car Seat Type	# Distributed
Infant carrier car seats	2
Convertible car seats	63
Combination seats	10
Booster seats	9

SOUTH COUNTY OPIOID WORKING GROUP (SCOWG) PROJECTS

SBPHC facilitates the SCOWG, which is a group comprised of a wide variety of organizations working a variety of goals around substance use disorder (SUD) in Southern Berkshire County. This group continues to work on the following:

- Sharps informational campaign.
- Allocation of the Opioid Settlement Funds.
- Regional system for disposing of unused prescription drugs collected at police stations.
- Supporting Harm Reduction Van

COMMUNITY COLLABORATION AND ENGAGEMENT

As members of the South County community, we engage with other meetings to provide a public health nursing perspective and be to tie into and enhance other efforts going on in our community. Meetings attended include:

- Berkshire Alliance to Support Immigrant Community (BASIC)
- Berkshire Community Action
- BCBOHA Friday calls
- Community Resource Meeting
- Get Vaccinated Berkshires Website Meeting
- Housing Training
- Opioid Settlement Community Conversations
- Public Health Excellence Grantee monthly meetings
- Massachusetts Health Officer Association Executive Meetings
- SBPHC/BPHA Leadership Coordination Group
- Sheffield BOH Meetings
- South Berkshire Community Health Coalition
- South County Opioid Working Group Meeting
- South County Resource Meetings
- Southern Berkshire Rural Health Network Leadership Meeting
- Southern Berkshire Regional Emergency Planning Committee
- Southern Berkshire Opioid Collaborative Meetings (SBOC)

Questions? Jill Sweet, Lead Public Health Nurse (jill@tritownhealth.org)
Jayne Smith, Shared Service Coordinator (jayne@tritownhealth.org)
Jim Wilusz, Executive Director TTHD (jim@tritownhealth.org)

Michael Lanoue, Chair
Peter Stanton, Vice Chair
Ruby Chang, M.D.



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TOWN OF GREAT BARRINGTON MASSACHUSETTS

Rebecca Jurczyk
rjurczyk@townofgb.org

BOARD OF HEALTH

2023

Pursuant to M.G.L c. 111, s31:

The Board of Health passes a local Regulation restricting the use of Glyphosate containing chemicals on Town owned and/or managed land.

Whereas, the Board of Health has determined that there is an increasing body of scientific evidence indicating that glyphosate poses harm to developing children, adult human gut biome, pollinators, animals, agriculture and our food systems, and the environment as a whole.

Whereas, in 2015 the World Health Organization published a report stating that glyphosate “was probably carcinogenic to humans” and found a strong association between exposure to glyphosate and non-Hodgkin lymphoma and that glyphosate exposure caused DNA chromosomal damage in human cells as well as genotoxic, hormonal and enzymatic effects in humans.

Whereas, the Board of Health aims to act in the best interest of human health and This regulation aims to protect and promote the health of our ecological systems by restricting the use of glyphosate

Whereas, the Board of Health seeks to be in alignment with the 2016 affirmative Town Meeting vote for the Resolution committing Great Barrington to a pollinator friendly town.

Section 1:

AUTHORITY

Pursuant to M.G.L c.111, s.31 Boards of Health have the authority to pass reasonable local regulations.

Section 2:

DEFINITIONS

- a. **Glyphosate** – A broad spectrum herbicide and crop desiccant. The compound is a phosphonate. The chemical compound is used to kill weeds, especially annual weeds and grasses.
- b. **Herbicide** – Chemicals used to manipulate or control undesirable vegetation.

- c. **Licensed Applicator** – An individual who has a current and valid “Pesticide Applicator License” from the MA Department of Agricultural Resources Program
- d. **Notice of Intent** – An application submitted to the Health Department/ Board of Health for review and approval. Referred to herein as “NOI.”

Section 3:

PROTOCOL

The Great Barrington Board of Health requires that all application of glyphosate- containing herbicides must be conducted by a Massachusetts Licensed Pesticide/ Herbicide Applicator. Licensed Applicators who intend to administer any herbicide containing glyphosate on Town-owned or Town- operated property must submit a Notice of Intent application to the Health Department for review. NOIs must be submitted no later than 14 days prior to scheduled work.

A NOI may include a site review by the Board of Health. The Board of Health reserves the right to deny any Notice of Intent application at any time. If NOI is denied by the Board of Health, the applicant will receive a letter via certified receipt.

Section 4:

ENFORCEMENT

If a person and/ or entity is found to be in violation of this Moratorium, the Board of Health has the authority to issue fines under M.G.L c.40, Section 21D. Fines can be issued up to \$300.00 per day the violation persists.

Section 5:

EXEMPTION

This regulation does not apply to private property located in Great Barrington.

Section 6:

SEVERABILITY

If any section, statement, or provision of this regulation is declared invalid or unenforceable, the other sections of this regulation shall remain in full effect.

This regulation shall take effect on: _____, 2023

Moratorium enacted by:

Dr. Ruby Chang

Peter Stanton,

Vice Chair

Michael Lanoue,

Chair

Board of Health Hybrid Meeting via Zoom and in Person at Town Hall
334 Main Street, Great Barrington MA
Thursday, April 6, 2023

1. CALL TO ORDER: (Roll Call Vote) -- Chairman Michael Lanoue opened the meeting at 6:34pm with a roll call vote: Dr. Ruby Chang, "aye," Michael Lanoue, "aye," Peter Stanton, "aye."
Also present: Health Agent, Rebecca Jurczyk.
2. MEETING MINUTES: March 2, 2023 (Discussion/ Roll Call Vote)
P. Stanton made a motion to approve the minutes of the March 2, 2023 meeting; R. Chang seconded. M. Lanoue asked if any discussion – there was none. Roll call vote: R. Chang, "aye," M. Lanoue, "aye," P. Stanton, "aye." All in favor: 3-0.
3. BOARD OF HEALTH QUESTIONS/ UPDATES:
 - a. R. Chang stated she had connected with the DEP's drinking water expert who advised that the BOH has the ability to make water protection policies and advised the BOH should have regulations to protect groundwater, separate from the Zoning Board - and manage hazardous waste by requiring floor drains. She stated she would send guidelines and sample regulations to the board for discussion. M. Lanoue suggested discussing with the Zoning Board as there may be overlap - and asked if other towns have those regulations.
 - b. R. Chang reported work is being done regarding composting grants and the DPW is gathering data that is needed to apply.
4. BUSINESS
 - a. Continued; Recommendation to Selectboard on how Opioid Settlement funds are spent. Speaker, Gary Pratt from Rural Recovery Center. (Discussion/ Vote) – R. Jurczyk stated there should be a plan for the appropriation process by tomorrow to allow funds received in this fiscal year to be used next year, though she noted it could be fiscal 2025 - but she noted the recommendation can be made now. She added that the Rural Recovery Center is the only request that was received and suggested the BOH consider making a recommendation to the Selectboard to vote affirmatively that all opioid settlement funds be appropriated to the Rural Recovery Center through 2032.
 - i. G. Pratt provided background and an update including efforts to secure funding for sustaining ongoing operations and programs. He noted the Center is well positioned to receive the settlement funds as it provides direct services and fills gaps in services. He also stated for the last reporting period, the Center had 270 visitors – 76 of which returned for at least a second visit and 73 of which are from Great Barrington.
 - ii. M. Lanoue asked for public input – there was none. He also noted there are 14 people in attendance.

P. Stanton made a motion to recommend to the Selectboard all opioid settlement funds be directed to the Rural Recovery Center; R. Chang seconded. M. Lanoue asked if any discussion – there was none. Roll call vote: R. Chang, "aye," M. Lanoue, "aye," P. Stanton, "aye." All in favor: 3-0.

 - b. State Tobacco Control Updates; Restricting the Sale of Tobacco Products Local Regulation. Speaker; Cheryl Sbarra, MAHB and Jim Wilusz, TriTown Health Department. (Discussion) – J. Wilusz stated he had sent information in advance regarding updating tobacco regulations. He provided background on TriTown's efforts in administering the regional tobacco awareness program funded by the Department of Public Health and MAHB's efforts across the state around education, outreach and retailer compliance.

He reported that state regulations were updated in 2019 which have made local regulations out of date and unenforceable. He added that he is working with boards of health to merge local policies and state law with the goal of having one set of regulations for retailers and the community. He also noted there have been recent violations across the Berkshires.

C. Sbarra stated there is a new fining structure for selling tobacco to anyone under age 21 – with \$1,000, \$2,000 and \$5,000 for the first, second and third violations – plus a mandatory suspension. She clarified that the tobacco control program notifies the BOH of violations and the BOH is responsible for enforcement of state regulations. She stated next steps are to review what the Town currently has and compare state minimum requirements. It was stated that local policies and fines should be considered for violations not covered by state law – and having two fining structures is not difficult to manage. J. Wilusz stated he would review GB’s local regulations and add in the state’s and then review each one with the BOH – Board members agreed. He added that in the meantime if there are violations, state law should govern.

- i. R. Chang asked how violations are reported – J. Wilusz replied they are sent to the Health Agent/BOH and it was clarified that there is extensive retailer education and monitoring though regular compliance checks.
- ii. The Board agreed to proceed and will put the matter on the next agenda. J. Wilusz stated he would send a draft of potential new regulations to M. Lanoue and R. Jurczyk prior to that meeting.

c. Public Health Excellence Grant and Southern Berkshire Public Health Collaborative Update. Speaker; Cheryl Sbarra, MAHB and Jim Wilusz, TriTown Health Department. (Discussion) - J. Wilusz stated GB is part of the Collaborative and R. Jurczyk is very active and in a leadership role. It was noted that towns will need to clarify/sign on for either the Collaborative or the Alliance. Mike Hugo, MAHB, stated the Southern Berkshire Collaborative is the best organized and working well - he noted there is a lot of data and GB’s capacity assessment was comprehensive. He stated there would be funding available through ARPA and CDC beyond the \$300,000 currently received for workforce development and capacity-building. M. Lanoue clarified the additional funds would be a one-time allocation. It was noted that if a town’s capacity is below the state average there will be funds to level the playing field and beyond to get people to a higher level – and the capacity report is aggregated, not broken out by town, but that information can be accessed. It was clarified that the Collaborative has identified staffing as its top priority, and specifically regarding GB, priorities include shared staffing/services, consolidating contractor work across towns, documentation and training and achieving performance standards – and it was noted there will be funding to address these priorities. He added MAHB will hold a program June 3 for board of health members and encouraged the Board to attend.

- i. R. Chang asked if environmental sustainability is part of the BOH’s purview such as composting, recycling, glyphosate – C. Sbarra replied those things are included and more – and the manual of public health laws describes statutory responsibility for public, environmental, community and preventive health.

d. Public Hearing: on enacting the Proposed Regulation on limiting the use of Glyphosate containing chemicals (herbicides and pesticides) on Town Owned and Operated Properties.

- i. Open Public Hearing (Vote)

P. Stanton made a motion to open the public hearing; R. Chang seconded. Roll call vote: R. Chang, “aye,” M. Lanoue, “aye,” P. Stanton, “aye.” All in favor: 3-0.

ii. Presentation of the Proposed Regulations/ Board of Health comment period

- M. Lanoue stated this topic would require multiple meetings to hear/consider public comments on the proposed regulation. He asked that the Board make revisions prior to meetings so meetings are reserved for public input and decision-making. He also stated there were no applications since the moratorium – but it is an issue the BOH wants to consider/support and to make a statement expressing its concerns to ensure a regulation/guidance is in place for the future. He noted glyphosate is not a big issue and so this is an ideal time to address it. He continued to note he sits on the Conservation Commission which oversees McAllister Park and has seen significant, ongoing efforts to manage invasives there. He noted he would not propose an outright ban on glyphosate as it is important in habitat restoration if it is used responsibly. He noted there are other ways of habitat restoration and invasive management but towns have limited budget/resources so glyphosate use can be reasonable. He noted the goal is to have policies in place to understand glyphosate use and be sure the right people are using it – but stated he is open to discussion and other perspectives.
- R. Jurczyk stated there have been no Notice of Intent applications in the last 1.5 years. She noted the current working draft is the moratorium, but noted it does not address enforcement when glyphosate is applied on Town owned/managed land without the NOI process or is there is a disregard of the process – and she asked the Board focus on that aspect. She also noted the Parks Commission, DPW and Conservation Commission are gatekeepers of the regulation and would be relaying them to staff/contractors. She recommended not closing the public hearing until their feedback is received. M. Lanoue stated we can let them know what we are doing and encourage them to weigh in. He added that he would raise it with the Conservation Commission at its next meeting.

iii. Public comment period (time limit 5 minutes per speaker)

- M. Lanoue stated there would also be opportunity for public comment at the next meeting.
- Vivian Orłowski, Chair Agricultural Commission, provided her own and shared expert perspective on treating and managing invasive species. She noted alternatives to glyphosate use such as replanting better species and allowing invasives to self-limit over time – and shared that for other towns, land management professionals and farming glyphosate is not used – she also noted the potential impact on water quality.
 - Andrea Panaritis, 30 Seekonk Road, stated she is an Agricultural Commission member and asked the board to consider exemption language used by other towns that have banned glyphosate – she noted they can offer guidance when reviewing requests for exemptions. She also stated the Board should guide the public regarding risks and education for alternative methods and products.
 - Ambrose Clausen, 2 Samantha Lane, stated she has experience in organic farming where no spray of any kind is used, but instead, other methods are used such as plastic cover to kill invasives. She stated concerns about the ability to measure glyphosate and noted its binding agent is as harmful - and that it generally has broader reach than just the specific application. She asked that other options be explored.
 - Devin Arnold, Taconic Avenue, stated he works with habitat restoration and invasive management and is opposed to using glyphosate and noted that are other options with less ecological impact on soil, food, etc. He expressed concerns about industry practices and stated glyphosate makes preserving resources, regenerating damaged areas and encouraging pollinators more difficult.

- Christopher Wiltshire, 39 South Street, stated he works with a nature organization and has invasive removal experience. He encouraged small scale, slow management and noted invasives are a systemic issue.
- Randi Jordan, 55 Blue Hill Road, asked about the availability of ARPA funds and asked if they could be used to help farmers, landscapers and others use alternatives to glyphosate - M. Lanoue replied the state will determine how funds are distributed and the Agricultural Commission would be the lead on agricultural land. He added this regulation would only apply to Town owned/managed land, not private land.
- V. Orłowski stated the Agricultural Commission has an advisory role and collaborates with other boards/committees and Town departments. She stated she would like to have input on this regulation and suggested it is presented to the Selectboard. She also stated this is a Right to Farm community and we cannot control what farmers put on their land. She also emphasized the importance of educating the public.

iv. Board of Health Discussion & edit period

- R. Chang shared information on the impact of glyphosate on saplings and noted there are other chemicals similar to glyphosate so the discussion should be broader. She also noted glyphosate has been linked to lymphoma.
- M. Lanoue stated suggestions should be emailed to R. Jurczyk for discussion at the next meeting.

v. Motion to approve, Amend, deny the Glyphosate Regulation. (Roll Call Vote)

P. Stanton made a motion to continue the public hearing to May 4 at 6:30pm; R. Chang seconded. M. Lanoue asked if any discussion – there was none. Roll call vote: R. Chang, “aye,” M. Lanoue, “aye,” P. Stanton, “aye.” All in favor: 3-0.

- e. Earth Day Clean Up (Discussion) - R. Jurczyk stated Earth Day is April 22 - groups are being coordinated and bags are available along with sign up via the Town website, Department of Health Facebook page and via a QR code. R. Chang added participants should wear gloves and only use yellow bags from the DPW,

5. HEALTH DEPARTMENT UPDATES:

- a. Housing Updates – R. Jurczyk stated there is a new housing complaint and the correction order is in the packet. She added it is a heat and amperage complaint, there is a 30 day timeline for addressing the violations and the landlord is currently working on it.
- b. 2023 Rabies Clinic – R. Jurczyk stated the clinic was held and 23 vaccinations were given. Since attendance was low, Bilmar suggested holding another clinic in the fall - and the Board agreed.

6. CITIZEN SPEAK TIME

- a. R. Jordan stated Earth Day volunteers should be aware of ticks.

7. MEDIA QUESTIONS: No media asked to speak.

8. ADJOURNMENT: (Roll Call Vote) - P. Stanton made a motion to adjourn; R. Chang seconded. Roll call vote: R. Chang, “aye,” M. Lanoue, “aye,” P. Stanton, “aye.” All in favor: 3-0. The meeting was adjourned by unanimous consent at 8:39pm.

Respectfully submitted,

Stacy Ostrow, Recording Clerk

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

A. Statement of Purpose:

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

Whereas 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 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 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 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 youth⁷;

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

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%⁸;

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’s who smoked cigars reported smoking cigar brands that were flavored⁹;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking¹⁰;

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 addiction¹¹;

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 sale¹²;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation¹³;

Whereas menthol makes it easier for youth to initiate tobacco use¹⁴;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018¹⁵;

⁸ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents’ Cigar Use: Evidence from the National Youth Tobacco Survey*. American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.nebi.nim.gov/pubmed/21809109.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² See fn. 3 at p. 85.

¹³ www.fda.gov/downloads/ucm361598.pdf, <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

¹⁴ www.tobaccofreekids.org/assets/factsheet/0390.pdf

¹⁵ MA YRBS 2017

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”¹⁶;

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 cigarettes¹⁷;

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

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”¹⁸.

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

B. 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 which states "Boards of health may make reasonable health regulations".

C. Definitions:

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

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food, beverages or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Great Barrington Board of Health and applicable state licenses. Entrance to the establishment must be secure so

¹⁶ 310 CMR 30.136

¹⁷ 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.

¹⁸ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

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 regardless of any content.

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, 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, menthol, mint, wintergreen, 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.

Child-Resistant Package: Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in such kits or roll-your-own packages shall be considered “blunt wraps” for the purpose of this regulation.

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

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

Coupon: Any card, paper, note, form, statement, ticket or other communication 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.

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

Employee: Any individual who performs services for an employer.

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

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

Great Barrington Board of Health: The legally designated board of health for the towns of Great Barrington and/or their legally designated agent.

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 package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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.

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

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

Person: Any retailer, 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.

Retailer: A person that operates a retail establishment.

Rolling Papers: Sheets, rolls, tubes, cones or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly-smoked herbs.

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: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Great Barrington Board of Health and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars”, “hookah bars” and “vape bars”.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

Tobacco Product: A product containing or 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, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

Tobacco Sales Certification Training: A certification training program, approved by the Great Barrington Board of Health that require the training which must be successfully completed by all tobacco product salesclerks engaged in the sale or distribution of tobacco products directly to the consumer. For the purposes of this section, the content of the tobacco product sales certification training program must be approved by the Board of Health.

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.

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

D. No Tobacco Sales to Persons Under Twenty-One (21) Years Old:

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.
2. Required Signage:
 - a. All retail establishments, including smoking bars and adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) except in the case of smoking bars, notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage 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 feet or greater than nine feet from the floor.
 - b. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."
 - c. All smoking bars and those adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall warn persons entering that smoking and vaping may be present on the premises, and provide information concerning the health

risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

3. Identification: Each person selling or distributing tobacco products or admitting entrance into a smoking bar or adult-only retail tobacco store, shall first verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the Great Barrington Board of Health 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 Great Barrington Board of Health are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Great Barrington Board of Health jurisdiction.
2. As part of the 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 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 about the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product 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 shall be determined by the Great Barrington Board of Health annually.
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. As of the effective date of this regulation, no new adult-only retail tobacco stores shall be located within twenty-five (25) feet of an existing retailer with a tobacco product sales permit.
7. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or 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 age of 21 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 **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. **(If you want to retire the permit as way to decrease permits over time. We will add more language.**
 - b. 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.
 - c. (add this ONLY if you plan to retire permits) As of _____ any permit not surrendered, revoked or renewed either because a retailer no longer sells tobacco products, as defined

herein, or because a retailer closes the retail business, shall be returned to the Great Barrington Board of Health shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.

- d. 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.
- e. 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.
- f. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises
- g. 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 may acquire said permit providing the applicant submits a valid application and meets all conditions within this regulation 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. Permits for adult-only retail tobacco stores will only be issued if one is available pursuant to section 10(c) above.

An application for transfer of a Tobacco Product Sales Permit to a new owner for the sale of tobacco products from an existing location with a valid Tobacco Product Sales Permit will not be denied solely on the basis of the quota set forth in this section, provided, however, that such an application will be treated as a new application in all other respects. If the permit transfer application is not received within said sixty days of the transfer of the business, the permit will be deemed surrendered.

F. Prohibition of Smoking Bars:

Smoking Bars are prohibited in the Great Barrington Board of Health jurisdiction.

G. 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 ninety cents (\$2.90) 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 and eighty cents (\$5.80) 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 Great Barrington Board of Health jurisdiction.
5. 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:

No person shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer, do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010).

I. Nicotine Content in Electronic Nicotine Delivery Systems:

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores or smoking bars. Retailers must obtain from a manufacturer documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

J. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in the Great Barrington Board of Health jurisdiction.

K. 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.

L. 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. Permit holders who sell 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 permit holders 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."
4. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

M. Self-Service Displays:

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

N. Vending Machines:

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

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

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

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

No health care institution located in Great Barrington Board of Health 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.

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

No educational institution located in Great Barrington Board of Health 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.

R. Incorporation of State Laws and State Regulations:

1. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§6, 6A, 7, 28, 29 and M.G.L. Ch. 112, §61A.
2. 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”) and 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”).

S. Certification:

No person shall sell any tobacco product without first successfully completing an approved tobacco sales certification training and obtains confirmation of certification.

2. New employees have thirty (30) consecutive days to successfully complete an approved tobacco product sales certification training. Employers must provide documentation confirming new hire if requested by Board of Health.

T. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate MGL Ch. 270, Section 6 and 105 CMR 665, the following penalties apply:

- a. In the case of a first violation, a fine of one thousand dollars (\$1000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 040(d), for up to 30 consecutive business days but no less than 1 business day.
- b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) and the Tobacco Product Sales Permit shall be suspended per 105 CMR 040(d), for up to 30 consecutive business days but no less than 1 business day.
- c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended per 105 CMR 040(d), for up to 30 consecutive business days but no less than 1 business day.

2. For violations of all other sections specific to the Great Barrington Board of Health the violator shall receive:

- a. In the case of a first violation, a fine of three hundred dollars (\$250.00).
- b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of four hundred dollars (\$350.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.

c. In the case of three or more violations within a thirty-six (36)-month period, a fine of seven hundred fifty dollars (\$750.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

d. State Law Fines and Regulation Fines:

Policies Subject to State Law Fines
(G.L. Chapter 270, §6 (Section S. 1)

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §6)
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §6)
- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a minor into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))

Policies Subject To Local Regulation Fines
(Section S.2)

- Prohibition of the Sale of Blunt Wrap
- Ban on Smoking Bars
- Cigar Sales Regulated
- Tobacco Product Sales in Health Care Institutions
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Maximum Number of Tobacco Sales Permits
- No New Tobacco Retailer Near Schools
- No New Tobacco Retailer Near Existing Permit Holder
- Mass. Department of Revenue license(s)
- Retailer possessing, holding, keeping prohibited flavor products
- Local Tobacco Sales Permit Requirement for retailers who are neither Smoking Bars nor Retail Tobacco Stores

Permit suspensions and permit revocations are calculated using the total number of a retailer's violations, combining those violations that receive state-mandated fines and those that receive local fines. Where there is a difference in permit suspension periods, the longer period shall apply.

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.

4. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
6. The Great Barrington Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Great Barrington Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. 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.
6. For purposes of such fines, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

U. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.

V. Separate Violations:

Each day any violation exists shall be deemed to be a separate offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

W. Enforcement:

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

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

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

X. Severability:

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

Y. Effective Date:

This regulation shall take effect on _____

As approved by the Great Barrington Board of Health:

:

Regulation approved:

Published Notice of Public Hearing:

Public Hearing:

Summary Regulation Published in Public Newspaper:

Submitted to MA DEP Central Registry: