

Board of Health
Meeting Minutes
March 26, 2024

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2024 APR 18 11:23
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2024 APR 19 11:23
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Members Present: Kelly Lamas, Chair; Adrienne DeSantis, Secretary; Antonio Tavares, Member

Also Present: Paulina Matusik and Erin McMurray

Meeting was called to order at 4:31 PM by Ms. Lamas and the Pledge of Allegiance was performed.

Motion was made by Ms. DeSantis to appoint Ms. Lamas as Chairperson, seconded by Ms. Lamas. All in favor 2-0. Motion was made by Ms. Lamas to appoint Ms. DeSantis as Secretary, seconded by Mr. Tavares. All in favor 3-0. Reorganization will be sent to all town departments.

Monthly Business:

Ms. DeSantis signed the meeting minutes from February 27, 2024. Ms. DeSantis made a motion to accept the meeting minutes for Tuesday, February 27, 2024. Seconded by Mr. Tavares. All in favor 3-0.

Ms. Matusik updated the board, noting that it has been busy in the department since the Health Inspector left. She is still looking for a Health Inspector. On March 6, 2024, Ms. Matusik interviewed a candidate, but it did not work out because the applicant retracted their application the next day. The applicant wants to focus on school and their bachelor's degree and to learn more about public health. During the interview Ms. Matusik explained that the health inspector would be doing inspections for food, housing, septic, and complaints. A Registered Sanitarian certification would be required. She also explained that it is a lot, but this is how the position for the health inspector is set up.

Ms. Matusik noted there were 13 applicants – 5 did not qualify because the applicants would at least need a bachelor's degree. Two interviews were scheduled, one did not work out and the second interview is scheduled for March 27, 2024, the applicant does have some inspectional background, and the remaining applicants are brand new graduates with no experience in local or inspectional services, this would be a lot of training, but something that we could do. Ms. Matusik mentioned that the applicants have never experienced doing inspections and is not sure if this would be an interest for them.

Ms. Lamas wanted to know if Ms. Matusik, and Human Resources would be agreeable to interviewing the new graduate applicants on a half day basis to observe what the inspections would entail. Ms. Matusik explained the inspections take about two to three hours. This would be a long training period, time commitment and a lot of money to certify someone that doesn't have any certifications. Ms. Matusik thought this was a great idea and will run this through Human Resources.

Ms. DeSantis asked how Ms. Matusik is doing during this time without having a health inspector? Ms. Matusik is taking it day by day and reached out to Andrea (Health Director for Quabbin Health

District) to help go over food inspections. She is also handling the complaints that come in. She mentioned the past health inspector brought the food inspections up to date, so she does not have any concerns and is managing at the moment. Ms. Matusik explained that through the grant, we can contract out for all the towns, including Ludlow. Ms. Matusik and Ms. McMurray will be working on this together.

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2024 APR 19 A 11: 23

Visitations:

TOWN OF LUDLOW

Ms. Lamas introduced Lisa Stevens-Goodnight noting she is from the Massachusetts Municipal Association here to discuss and review updating the towns tobacco regulations that were last updated in 2018. Ms. Matusik handed out copies of the 2018 tobacco regulations, the new regulations, and the town's bylaw regarding prohibiting smoking in public places to each of the members of the board to review. Ms. Matusik brought this forward to help create a standard across all Health Departments because the Department is part of the tobacco coalition which helps with our inspections. There are a total of sixteen places that currently sell tobacco in Ludlow. On March 10, 2024, a youth compliance check was done with one store in violation.

Ms. Stevens-Goodnight stated that we are part of the Pioneer Valley Tobacco Collaborative, which is a part of the state grant program, and is similar to the shared services that has been discussed. Part of the collaborative includes Merridith O'Leary, who could not be in attendance, noting that she runs the program and has a staff of about one or two people that help her with the inspections to make sure the retailers are in compliance, in particular, not selling to underage and in compliance with what they are selling. Ms. Stevens-Goodnight stated that part of the collaborative is the Massachusetts Tobacco Cessation and Prevention Program (MTCP) which is a state program and part of that program includes Ms. Stevens-Goodnight, Cheryl Sbarra (Massachusetts Association of Health Boards), and Sarah McColgan (Massachusetts Health Officers Association) they provide legal, technical assistance and inspection training. They developed model regulations that have options of what can be put into our local regulations to strengthen tobacco control and what the state law requires of all towns to enforce tobacco control. The tobacco control laws were updated at the state level in 2019. Ms. Stevens-Goodnight noted that the reason the tobacco law passed was because of laws on a municipal level. The MTCP program is focusing on helping municipalities strengthen their tobacco control in an effort to get better control statewide.

Ms. Matusik went through the towns tobacco regulations from 2018, she made notes, noted updated verbiage, and highlighted in yellow the latest state law and DPH regulations, and highlighted in green the regulations that are local policy decisions that may be changed as a board.

Ms. Stevens-Goodnight answered questions and explained the highlighted regulations to the board. It was noted that in the town's regulations there is a cap of 20 tobacco sales permits. Ms. Stevens-Goodnight explained retail density, noting populations that live in high density retail areas have poor health outcomes. There are several reasons why, but one of the main reasons is exposure to tobacco retailers. The tobacco settlement contract was signed in the 1990's which included multiple restrictions on tobacco advertising. Only tobacco retailers can be paid to put tobacco advertising in their retail stores. They can no longer advertise on billboards or paint on the sides of barns because it has been noted that kids are exposed to a lot more advertising in high retail density area's which make it harder to quit, secession goes way down, and initiation goes up and the hope is for the opposite to happen. Ms. Stevens-Goodnight explained that they are seeing

clusters, meaning retailers in certain areas tend to have higher need populations and looking to improve health outcomes by not having negative influences. There is no perfect number for tobacco sales permits, it does vary from town to town. It is understood these are people's business, and don't want to take permits away. Some of the strategies to reduce the number of tobacco sales permits over time, noting it is a slow process, is to reduce the density of retailers in a given area by reducing the exposure, increasing the chance for people to successfully quit and decreasing the chance that young people will start. Ms. Stevens-Goodnight noted that the cap of 20 is a basic cap. If it looks like the town is not receiving more applications for tobacco permits, the Board of Health can reduce the number to what has already been permitted (16) or hold on to the (4) remaining permits if new businesses open. The Board of Health can also reduce the cap of tobacco permits where it would automatically retire the permit if a business changes, sells or closes. Ms. Stevens-Goodnight explained that there is language to help with the density cluster, encouraging people out of the density (concentrated area's), by restricting how close the new business is to a school or another retailer.

Ms. Lamas inquired about not adding the density language to the regulations, with the (4) remaining permits would that mean the remaining permits could not be denied? Ms. Stevens-Goodnight acknowledged a permit could be denied in certain instances, if the business is known not to comply, the permit could be denied. But generally, the permit would be approved.

Tobacco violations were discussed and noted that the regulations would default to Option 1 because they have not been updated since 2018. Option 2 is a secondary option. Deciding on which section to include in the regulation varies from collaborative-to-collaborative and Ms. O'Leary (Tobacco Control Coordinator) would assist with what is the best practice. Because the law is new, there is not a set standard, it is what works best for each community. In the new tobacco law of 2019, the State increased the State regulation fines to \$1,000, \$2,000, \$5,000. The local town regulation fines are \$100, \$200, \$300. A process was put in place that the Board of Health is allowed to do the initial appeals hearing that they would have been precluded from because of the high State regulation fine amount. Ms. Stevens- Goodnight communicated that any State violation fines are required to be \$1,000, \$2,000 or \$5,000.

Ms. Matusik wanted to know if it is recommended to remove the tolling period or the advanced cap of 36 months. She has noticed there are certain establishments that will have their first offense and within the 36-month period have their second offense, then the cap is reset, and the establishment is able to start fresh. Ms. Stevens-Goodnight explained that if the tolling period or advanced cap is not in the regulations, it will reset at a shorter period every 24 months. She went on to note that Ms. O'Leary has the largest geographic region. One of the issues with the 24-month tolling period is Ms. O'Leary inspects each town once a year and does reinspection's so they may get up to two violations unless they are in violation each time, she does an inspection. With the time frame of 36-months, the inspections could lead to more violations.

Ms. Lamas stated that there are sixteen active tobacco permits and wanted to know what the Board of Health's course of action is legally under these regulations if someone is selling tobacco without a permit. Ms. Stevens-Goodnight explained there are a couple of options: The first one is the Nuisance Statute (Public Health Law), the second one would be to get the police involved because they are breaking the law, if they have other types of permits like inspectional services those can be

pulled if they cannot comply with the regulations. The tobacco control agent, inspectional services and the police can all be involved in finding out if this is happening.

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Ms. Stevens-Goodnight recommended using the word **shall** (which means it has to be this way) instead of the word **may**, which is an option from the State. If the regulations highlighted in green are not used, then for every violation the establishment will come before the board and the board will have a hearing about whether this happened. By using the word shall, Ms. O'Leary can issue the letter with the suspension date and their hearing would just be the appeal – the board wouldn't have to do a negotiation.

2024 APR 19 A 11: 23

TOWN OF LUDLOW

Ms. DeSantis wanted to know what is the difference between Option 1 and Option 2? Ms. Stevens-Goodnight explained that option 2 has not been tested in court and is not sure if it will stand up in court. She explained that it does force everything to cease and desist in the State law. Some towns want option 2 because of the higher fines which would bring everything up to the state level. It was also mentioned that we are out of the non-criminal disposition and may be vulnerable to challenge in court.

Ms. Stevens-Goodnight stated that there is a product that is not in the draft that was handed out by Ms. Matusik because it is new. The new product is nicotine pouches (ZIN) they are tiny packages of nicotine that you put in your mouth, they are spitless, odorless, very discreet and cheap. They are seeing more and more of this item on the shelves. There is language that can be included in the regulations to put them in adult only stores if you have them, and if not then we would work on language to regulate them. She wanted to make sure this product is on every board's radar.

Ms. Lamas asked when the time comes when we enact this new tobacco regulation, is there a time of year that is recommended and how does this usually get implemented? Is there a grace period? Ms. Stevens-Goodnight stated that we already have existing tobacco regulations that are reasonable. Ms. O'Leary and Ms. Matusik would be able to assist on how to guide the board with the new regulations. Ms. Stevens- Goodnight also recommended holding a public hearing, it is not required but is recommended.

Ms. Lamas welcomed Erin McMurray as the new Shared Services Coordinator for the Mill Towns. Ms. Matusik introduced Ms. McMurray to each of the board members. Ms. McMurray started March 18, 2024, for the Shared Services Coalition that includes Ludlow, Palmer, Warren and West Brookfield. She is a Town of Ludlow employee and works out of the Ludlow office. She will be giving monthly Shared Services updates.

Actions/Correspondence:

Mr. Tavares made a motion to nominate Octavia Anderson, ACO as the Animal Inspector. Seconded by Ms. DeSantis. All in favor 3-0.

Ms. Lamas wanted to share a slide presentation that she found very informative with the board regarding MAHB – Legal Authority of Boards of Health. She also requested that Ms. Matusik share this with the Board of Health, Town Administrator, Board of Selectmen, and the Town Counsel so that as everyone moves forward, everyone will be aware of the Board of Health's legal authority in Massachusetts. Questions have been arising throughout the town, Charter and other

conversations that have taken place questioning if the Board of Health can be disbanded and/or what happens with the Charter?

Ms. Lamas explained that the Board of Health in Massachusetts is statutory and protected by the Massachusetts General Law. The Board of Health will always exist. How the Board depends on the Charter whether the positions are elected or appointed. The Board of Health is given legal authority to regulate the public health, safety, and welfare of its residents with reasonable health regulations. Ms. Lamas discussed that Cheryl Sbarra, Esq. stated "just because we can doesn't mean we should." Anything the board enacts should be given thought and researched. The Massachusetts Supreme Judicial Court has consistently upheld the Board of Health's authority to enact health regulations.

Ms. Lamas also discussed limitations and considerations. These are steps, risk assessments, that would be done as a board to assess if the board were to enact legislation. Some of the steps would be:

- Why are we doing this?
- Is there a risk of harm to others?
- Is the risk to those who are more susceptible to harm?
- Is the risk to an individual?
- Is there already State or Federal law that prevents the board from acting on this?

This is what health boards think through before they enact a regulation for the health and wellbeing of their residents.

The next Board of Health meeting will be on April 18, 2024, at 4:30 PM.


A motion was made by Ms. DeSantis to adjourn the meeting at 5:26 PM. Seconded by Mr. Tavares. All in favor 3-0.

Attachments:

2024 Sales Regulation – Sample regulation restricting the sale of Tobacco and Vape Products

MAHB PowerPoint – Legal Authority of Boards of Health

Respectfully submitted,


Adrienne DeSantis, Secretary

2024 Sales Regulation -DRAFT

SAMPLE REGULATION RESTRICTING THE SALE OF TOBACCO AND VAPE PRODUCTS

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2024 APR 19 A 11: 24
TOWN OF LUDLOW

THIS MODEL REGULATION INCORPORATES THE FOLLOWING:

1. The minimum standards required pursuant to the United States Food and Drug Administration relative to the sale and distribution of cigarettes; and
2. The minimum standards required pursuant to Massachusetts state law and regulation. This includes G.L. c. 270 regarding sales to those under 21, tobacco and vaping product sales including flavored products, required signage, matching definitions and other relevant state statutes and regulations.

CHECKLIST FOR POLICY DECISIONS (circle decisions):

- | | | |
|---|-------|-----|
| 1. No permit renewal if outstanding fines exist (§E.6) | YES | NO |
| 2. No permit renewal if three sales to persons under 21 (§E.7) | YES | NO |
| 3. Cap and/or reduce number of permits (§E.8)
Simple Cap () Reducing Cap () Dual Cap () | YES | NO |
| 4. No new permits within 500 feet of a school (§E.11.a) | YES | NO |
| 5. No new permits within (----) feet of an existing permittee (§E.11.b)
500 () 1,000 () 2,000 () | YES | NO |
| 6. Ban Smoking Bars (§F) | YES | NO |
| 7. Include minimum cigar package size/price (§H) | YES | NO |
| 8. Ban blunt wraps (§K) | YES | NO |
| 9. Ban free distribution of tobacco products (§L.1) | YES | NO |
| 10. Ban redemption of coupons (§L.2) | YES | NO |
| 11. Ban Self-Service Displays (§N)
Exception for Adult-Only Retail Tobacco Stores () | YES | NO |
| 12. Ban tobacco product sales in educational institutions (§R) | YES | NO |
| 13. Fining Structure System (§T)
Separate State and Local () Unified Fining Structure () | YES | NO |
| 14. Tolling periods for local violations (§T)
State level at 36 months () Over 36 months () | YES | NO |
| 15. Suspension Periods (§T) | YES | NO |
| 16. Choose Suspension Periods (§T)
First Violation: 1 to 7 days (mandatory for first underage sale) ()
Second Violation: up to 7 days ()
Third or More Violations: up to 30 days () | | |
| 17. "Shall" vs. "May" language for suspensions (§T) | SHALL | MAY |

YELLOW highlighted sections are language copied from the latest state law and DPH regulations.

GREEN highlighted sections are uniquely local policy decisions (most are on the above checklist) to be made by the Board of Health.

NO COLOR indicates that language has been previously adopted by Boards of Health.

**Regulation of the Ludlow Board of Health
Restricting the Sale of Tobacco Products**

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2024 APR 19 A 11: 24

A. Statement of Purpose:

Whereas, there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;¹

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 adolescence;⁴

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 smokers;⁵

Whereas, the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;⁶

Whereas, cigars and cigarillos, can be sold in a single "dose;" and enjoy a relatively low tax as compared to cigarettes;⁷

Whereas, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;⁸

¹ U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021),

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

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

³ U.S. Dep't of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁴ *Id.* at 13 (Executive Summary).

⁵ *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).

⁶ Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data/>).

⁷ CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>).

⁸ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2798449>

⁸ U.S. Dep't of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) (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;⁹

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 sale;¹⁰

Whereas, ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021;¹¹

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;¹²

Whereas, the New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students,¹³ which is incompatible with the sale of tobacco and nicotine products;

Whereas, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth,¹⁴

Whereas, the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;¹⁵

⁹ Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Dep’t of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012) www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁰ See fn. 3 at p. 85.

¹¹ MA YRBS 2017

¹² 310 CMR 30.136

¹³ New England Commission on Higher Education, *Standards for Accreditation* at 24 (2021), <https://www.neche.org/resources/standards-for-accreditation>.

¹⁴ Ying-Chih Chuang et al., *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) *J. Epidemiol Cmty Health* 568 (2005) (doi: 10.1136/jech.2004.029041); Shelley D. Golden et al., *County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012*, 17 (101005) *Prev. Med. Rep.* (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Eric C. Leas et al., *Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States*, 179(3) *JAMA Intern Med.*, 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); JG Lee et al., *Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis*. *Tobacco Control*. Published Online First: 03 September 2021; LR Reitzel et al., *The effect of tobacco outlet density and proximity on smoking cessation*. *American Journal of Public Health*. 2011, 101(2):315-320; L Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools?* *Preventive Medicine*. 2008, 47(2): 210-4.

¹⁵ LJ Finan et al., *Tobacco Outlet Density and Adolescents’ Cigarette Smoking: A Meta-Analysis*, 28(1) *Tob Control*. 27 (2019) (doi: 10.1136/tobaccocontrol-2017-054065); Abdel Magid HS et al., *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*, 66(4) *J. Adolescent Health* 423 (2020) (doi: 10.1016/j.jadohealth.2019.09.004).

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;¹⁶

Whereas, policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;¹⁷

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 Ludlow Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Ludlow Board of Health by G.L. c. 111, §31 which states "Boards of health may make reasonable health regulations".

C. Definitions:

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

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” in G.L. c. 270): An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that does not sell food, beverages or alcohol, that does not have a 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 twenty-one (21) is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Ludlow Board of Health and applicable state licenses. Entrance to the establishment must be secure so 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 product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain loose tobacco or other fillers.

¹⁶ Siahpush M. et al., *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*, 124(9) *Pub. Health* 525 (2010) (doi: 10.1016/j.puhe.2010.04.010); Lee JG, et al., *Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPiRE Study*, 71(5) *J. Epidemiol Cmtly Health* 487 (2017) (doi: 10.1136/jech-2016-208475); D.O. Fakunle et al., *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*, *Ethn Health*. 1 (2019) (doi: 10.1080/13557858.2019.1620178).

¹⁷ Ribisl KM, et al., *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*, 19(2) *Nicotine Tobacco Res.* 239 (2017) (doi: 10.1093/ntr/ntw185); HG, Henry et al., *Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019)*, 110 (4) *Am J. Pub. Health* 547 (2020) (doi: 10.2105/AJPH.2019.305512); A.E. Myers et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 *Prev. Med.* 67(2015) (doi: 10.1016/j.yjmed.2015.01.025).

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

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2024 APR 19 A 11: 24
TOWN OF LUDLOW

Bona Fide Purchaser for Value: A bona fide purchaser is someone who exchanges value for property without any reason to expect irregularities in the transaction.

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 G.L. c. 64C, §1, Paragraph 1. Tobacco leaf in 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.

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.

Health Care Institution: An individual, partnership, association, corporation or trust or a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. Health care institutions include but are not limited to hospitals, clinics, health centers, pharmacies, drug stores, doctors' offices, and dental offices. A retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution.

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.

Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products.

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.

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 age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Ludlow Board of Health.

Retailer: A person that operates a retail establishment.

Retail Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. [NOTES: This relates to flavor enhancers, see last sentence of Tobacco Product Flavor Enhancer definition. Adding this definition will permit banning flavored non-tobacco, non-nicotine wraps such as hemp wraps.]

Self-Service Display: Any display including an unlocked humidor regardless of size 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.

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 Town of Ludlow; and (v) maintains a valid license 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. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

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.

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 available, 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, in the form developed and made available by the Massachusetts Department of Public Health (DPH) and made available from the Ludlow Board of Health. Such signage shall include: (i) a copy of 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 tobacco products 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 DPH, 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 DPH, 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.

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2024 APR 19 A 11: 24

3. Identification:

- a. Each person selling or distributing tobacco products shall first verify the age of every purchaser of tobacco products by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
- b. Each person admitting entrance into a smoking bar or adult-only retail tobacco store shall first verify the age of every person entering by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.

E. Tobacco Product Sales Permit:

- 1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the Town of Ludlow without first obtaining a Tobacco Product Sales Permit issued annually by the Ludlow Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in Ludlow are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Ludlow.
- 2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Ludlow regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws 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 Ludlow Board of Health annually. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also be displayed conspicuously at the retail establishment.
- 5. 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. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.
- 6. 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.
- 7. 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 6 of the Violations section.

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2024 APR 19 A 11: 24

8. Maximum Number of Tobacco Product Sales Permits.

TOWN OF LUDLOW

[Basic Cap]

- a. At any given time, there shall be no more than [20] Tobacco Product Sales Permits issued in Ludlow. Any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
- b. 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.
- c. Applicants on the waiting list shall be responsible for ensuring up to date contact information has been provided to the Ludlow Board of Health. **[NOTE: This is the "basic" cap. When a town has the maximum number of permittees allowed, a waiting list should be started with the name and contact information of prospective tobacco retailers who are waiting to be contacted when a permit becomes available.]**

[Reducing/Retiring Cap]

- d. As of the effective date of this regulation, any permit surrendered, revoked or not 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 Ludlow Board of Health and 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.

9. Sale of Business.

- a. Notwithstanding a cap on the total number of permits holders, the seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health, as required herein.
- b. The purchaser shall apply for the transfer of the permit no later than (30) calendar days after said purchase. The purchaser shall not sell tobacco product until the **transfer of the permit is approved by the Board of Health;** and
- c. All fines and suspensions of the previous owner must be satisfied prior to the sale.

10. Retail Density.

- a. A new 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. **[If municipality adopts the Reduced/Retiring Cap this section (a) can be deleted].**

- b. A new Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within _____ feet [For example Five Hundred (500), One Thousand (1,000), Two Thousand (2,000)] of an existing 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. [If municipality adopts the Reduced/Retiring Cap this section (b) can be deleted].
- c. If the purchaser of a business with a valid tobacco sales permit pursuant to Section E. 9 changes the location of the business, the new location shall be subject to the retail density requirements of Section E.10. [If the Reduced/Retiring Cap is adopted add the following language to section (c):
- i. The new location shall not be 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 new location."
 - ii. The new location shall not be within _____ feet [Five Hundred (500) feet, One Thousand (1000) feet, Two Thousand (2000) feet] of an existing 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 new location.]

F. Prohibition of Smoking Bars:

Smoking Bars are prohibited in the Town of Ludlow. [If this section is adopted, delete language in the "required signage: section relative to smoking bars].

H. 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 Ludlow.
4. The Ludlow 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.

I. Sale of Flavored Tobacco Products Prohibited:

No person, as defined herein, 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. (NOTE: if the municipality permits smoking bars add this phrase [except in smoking bars for on-site consumption only]).

Retailers must obtain manufacturer documentation certifying that all products possessed, held, kept, sold or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

J. 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 manufacturer documentation verifying that all electronic nicotine delivery products possessed, held, kept, sold or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

K. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Ludlow.

L. 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, through any multi-pack discount (e.g., "buy-two-get-one-free") if the sale reduces the price of each back to less than the listed or non-discounted price.

M. 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, as defined herein, shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or 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, Massachusetts Hazardous Waste Regulations.

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 with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

N. 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.

Adult-Only Retail Tobacco Stores are exempt from this section.

O. Vending Machines:

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

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

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

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

No health care institution located in Ludlow 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.

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

No educational institution located in Ludlow shall sell or cause to be sold tobacco products, as defined herein, including by any person or retailer on the property of an educational institution.

S. Incorporation of State Laws and State Regulations:

1. The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to those provisions found at G.L. c. 270, §§6, 6A, 7, 28, 29 and G.L. c. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 940 CMR 21.00, Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts, 940 CMR 22.00 Sale and Distribution of Cigars in Massachusetts; and 105 CMR 665.00, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

T. Violations:

Option 1: State/Local distinction [NOTE: This is the default after the 2019 legislation made changes to the state law]

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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 G.L. c. 270, §§6, 28, 29 and 105 CMR 665.000, the following penalties apply:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) 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 665.040(d), for **[BOH decision: either state language: "up to 30 consecutive business days" or choose a specific day duration between 1 - 30 consecutive business days.]**
 - 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 (\$2,000.00) shall be issued and the Tobacco Product Sales Permit **[shall / may]** be suspended for _____ days **[choose a specific day duration: one (1) to seven (7) or more]** consecutive business days.
 - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Product Sales Permit **[shall / may]** be suspended for _____ days **[choose a specific day duration: seven (7) days to thirty (30) or more]** consecutive business days.
2. For violations of all other sections specific to the Ludlow, the violator shall receive:
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - b. In the case of a second violation within **thirty-six (36) months** of the date of the current violation, a fine of **two hundred dollars (\$200.00)** and the Tobacco Product Sales Permit **[shall / may]** 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 three hundred dollars (\$300.00) and the Tobacco Product Sales Permit **[shall / may]** be suspended for **thirty (30) consecutive business days.**
 - d. List of State Law Fines and Local Regulation Fines:

Policies Subject to State Law Fines
(G.L. c. 270, §§6, 28, 29 (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, §28)
- Penalties for sales to a person under the age of 21 of Tobacco/Vape products (105 CMR 665.045)
- Mandated Local Tobacco Sales Permit suspension for a first violation for sales to a person under the age of 21 of Tobacco/Vape products (105 CMR 665.040(d))
- Required Retailer Signage (105 CMR 665.015)

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

- Prohibition of the Sale of Blunt Wraps
- Ban on Smoking Bars
- Cigar Sales Regulated, including minimum sales price regulations
- Tobacco Product Sales in Health Care Institutions as more broadly defined than in state law
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban

- 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, §29)
 - 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 person under the age of 21 into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))
 - Other state policies
 - Display of Mass. Department of Revenue license(s)
 - No Local Tobacco Sales Permit
 - Retailer Density Minimums
 - Transfer of Permit in Sale of Business
 - Other local policies
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20 APR 19 A 11: 25
TOWN OF LUDLOW
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 Product Sales Permit.
 4. Failure to cooperate or interference 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 their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.
 6. The Ludlow 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 Ludlow 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.

7. 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.

Option 2: Unified Fining Structure

[Note: This applies the new state fining structure (\$1,000/\$2,000/\$5,000). If adopting this option remove Section T]

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 the violator shall receive:
- a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) 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 665.040(d), for **[BOH decision: either state language: "up to 30 consecutive business days" or choose a specific day duration between 1 - 30 consecutive business days.]**
 - 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 (\$2,000.00) shall be issued and the Tobacco Product Sales Permit [shall/ may] be suspended for _____ days **[choose a specific day duration: one (1) to seven (7) or more]** consecutive business days.
 - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Product Sales Permit [shall/may] be suspended for _____ days **[choose a specific day duration: seven (7) days to thirty (30) or more]** consecutive business days.
2. 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/may] hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
3. Failure to cooperate or interfere with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.
5. The Ludlow 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

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2024 APR 19 A 11: 25
TOWN OF LUDLOW

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 Ludlow Board of Health shall impose fines and 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.

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2024 APR 19 A 11:2
TOWN OF LUDLOW

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.
7. The Ludlow Board of Health has the authority to impose monetary fines administratively.

U. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in G.L. c. 40, §21D where the penalty calls for a monetary fine not exceeding three hundred (\$300) dollars. **[If unified fining is adopted, delete this section].**

V. Separate Violations:

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

W. Enforcement:

Enforcement of this regulation shall be by the Ludlow 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 Ludlow 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 _____, 2024.

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