

TOWN OF CHATHAM BOARD OF HEALTH

TOBACCO CONTROL REGULATION

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SECTION I FINDING AND PURPOSE

The 1986 Surgeon General's Report on "The Health Consequences of Involuntary Smoking" clearly documents that nonsmokers are placed at risk for developing disease as a result of exposure to environmental tobacco smoke (ETS). In January 1993, the Environmental Protection Agency classified ETS as a group A carcinogen, among the most toxic substances known to cause cancer in humans. Group A carcinogens include dioxin, benzene, radon, and asbestos. There is no safe level of exposure to ETS. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in nonsmokers. Exposure to environmental tobacco smoke presents a serious and substantial public health risk. Of particular concern is the workplace environment of nonsmokers, where they may be subjected to sustained, involuntary exposure. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function including asthmatics and those with obstructive air-way disease.

Studies have shown that vending machines afford an opportunity for unauthorized sale of cigarettes to minors. Evidence further demonstrates that tobacco is extremely addictive. Approximately 80% of all smokers begin smoking before the age of eighteen and more than 3,000 young people begin smoking every day in this nation.

The Chatham Board of Health finds that the sale of tobacco products is incompatible with the mission of health care providers because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medications.

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; and the U.S. Centers for Disease Control and Prevention has reported that the current use of electronic cigarettes, a product sold in dozens of flavors that appeal to youth, among middle and high school students tripled from 2013 to 2014. Surveys show that 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 olds who smoked cigars reported smoking cigar brands that were flavored. 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;^a

^a 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.

Public Beaches and Parks are our most visited natural areas. Smoking bans in these areas will provide environmental, aesthetic and health advantages to our community helping to ensure clean sand and water for our residents and visitors.

SECTION II AUTHORITY

The Board of Health of the Town of Chatham pursuant to Massachusetts General Laws Chapter III, Section 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

SECTION III DEFINITIONS

~~3.1 — Adult only retail tobacco store: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and 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 Chatham Board of Health.~~

3.2 Bar/Lounge: An establishment, with or without a food handler's license, devoted primarily to serving alcoholic beverages for consumption by guests on the premises, in which the consumption of food is incidental only to the consumption of such beverages.

3.3 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

3.4 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.

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

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

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

3.8 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.

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

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

3.11 E-Cigarette: Any product that can deliver nicotine to the user through inhalation of vapor or aerosolization. Electronic cigarette devices include any component part of such product, including liquid for use in the device regardless of whether the liquid contains nicotine, whether or not sold separately. This term includes such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. It does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product that is being marketed and sold or prescribed solely for the approved purpose.

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

3.13 Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the town of Chatham.

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

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

3.16 Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services or employs health care providers licensed or subject to licensing by the Massachusetts Department of Public Health under M.G.L. c. 112. Health Care provider includes hospitals, clinics, health centers, pharmacies, drug stores and doctor and dentist offices.

3.17 Hotels, motels, bed & breakfasts and lodging homes: A temporary dwelling as defined in G.L. Chapter 64G, Section 1.

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

3.19 "Membership association": A not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

- 1) a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or
- 2) a corporation organized under chapter 180; or
- 3) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or
- 4) a veterans' organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

3.20 Minor: A person under twenty-one (21) years of age.

3.21 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

3.22 Outdoor Space: An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

3.23 Public Place: An enclosed indoor area that is open to and used by the general public, including but not limited to the following facilities: licensed childcare facilities; educational facilities including school grounds; clinics; nursing homes; all elevators, stairwells, halls,

lobbies, and entrance ways accessible to the public; bars/lounges; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels and motels; retail shops; food service establishments; public restrooms; laundromats; hair salons; barbershops; libraries; municipal buildings; museums; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and any function rooms/halls when used for public meetings or public social functions. A function room/hall used for a private social function, in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements, shall not be construed as a public place.

In addition the following outdoor locations are defined as a Public Place: public beach or park owned and operated by the Town of Chatham.

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

3.25 Smoke Constituent: Any chemical or chemical compound in mainstream or side stream 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.

3.26 Smoking (or smoke): The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

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

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

3.29 Workplace: An indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other than enclosed spaces

rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

3.30 Vending Machine: A mechanical or electrical device which dispenses tobacco products by self-service, with or without the assistance of a clerk or operator.

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

SECTION IV NON-SMOKING IN PUBLIC PLACES

4.1 It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace.

4.2 Smoking is hereby prohibited in Chatham in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law”).

4.3 Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:

- 1) Smoking bars;
- 2) Adult-only retail tobacco stores;
- 3) Municipal-owned parks and playgrounds;
- 4) Municipal-owned athletic fields;
- 5) Municipal-owned beaches and other swimming areas
- 6) Membership associations (private clubs);
- 7) Nursing homes;
- 8) Hotels, motels, bed & breakfasts and lodging homes;
- 9) All outdoor areas of restaurants, bars, taverns where food and/or beverages are sold, served or otherwise consumed or carried;
- 10) Public transportation, bus and taxi waiting areas;
- 11) The area within 25 feet of the entrance to municipal buildings.

4.4 The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4 of this regulation.

SECTION V POSTING

Every person having control of a premise where smoking is prohibited by this regulation shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited by Law". Posting of the international symbol for "No Smoking" (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be deemed as compliance.

SECTION VI SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

6.1 Permit: To monitor compliance of the sale of tobacco products, the Chatham Board of Health will issue a Tobacco Sales Permit. No person, firm, corporation, establishment or agency, shall sell tobacco products within the Town of Chatham without a valid tobacco sales permit issued by the Board of Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits must be renewed annually at a time and fee set forth by the Board of Health. A tobacco sales permit is non-transferable. In addition, each applicant for a Tobacco Sales Permit is required to show proof of a current tobacco sales license issued by the Commonwealth of Massachusetts Department of Revenue. A separate permit is required for each retail establishment selling tobacco. Issuance of a tobacco permit by the Chatham Board of Health shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

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

6.2 Sales to Minors: No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Town of Chatham is **21**.

6.3 Required Signage: In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail, in the Town of Chatham. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Town of Chatham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail, in the Town of Chatham, shall conspicuously post any additional signs required by the Massachusetts Department of Public Health

The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail, in the Town of Chatham, shall conspicuously post signage provided by the Town of Chatham Board of Health that discloses current referral information about smoking cessation.

The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as “tobacco products”, at retail, in the Town of Chatham, shall conspicuously post a sign stating that “The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited.” The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

Identification: Each person selling or distributing tobacco products, as defined herein, shall 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 years old or older. Verification is required for any person under the age of 27. 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.

6.4 Cigar Sales Regulated: 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 \$5.00 or more. 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 10.00 or more. 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 Town of Chatham.

The Town of Chatham 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.

6.5 Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product at retail, in the Town of Chatham, ~~except in smoking bars and adult only retail tobacco stores.~~

6.6 Prohibition of the Sale of Blunt Wraps: No person or entity shall sell or distribute blunt wraps in Town of Chatham.

6.7 Free Distribution and Coupon Redemption: No person shall: Distribute or cause to be distributed, any free samples of tobacco products, as defined herein; 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

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.

This section shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

6.8 Out-of-Package Sales: 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.

A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000 and must provide the Town of Chatham Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product. All retailers must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."

6.9 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.

6.10 Vending Machines: All vending machines containing tobacco products, as defined herein are prohibited.

6.11 Non-Residential Roll-Your-Own Machines: All Non-Residential Roll-Your-Own machines are prohibited.

6.12 Prohibition of the Sale of Tobacco Products by Health Care Institutions: No health care institution located in Town of Chatham 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.

6.13 Prohibition of the Sale of Tobacco Products by Educational Institutions: No educational institution located in Town of Chatham 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.

SECTION VII VIOLATIONS AND PENALTIES

7.1 It shall be the responsibility of any individual, establishment, permit holder and/or his or her business agent, to ensure compliance with any or all sections of this regulation.

7.2 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 . Enforcement of this regulation shall be by the Chatham Board of Health or its designated agents.

The violator shall receive:

- 1) In the case of a first violation, a fine of at least one hundred dollars (\$100.00) will be issued to the retailer.
- 2) In the case of a second subsequent violation a fine of at least two hundred dollars (\$200.00) and the Tobacco Product Sales Permit may be suspended for seven (7) consecutive business days.
- 3) In the case of three or more violations a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit may be suspended for thirty (30) consecutive business days.
- 4) In the case of three violations or repeated, egregious violations of this regulation the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.

Refusal 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.

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.

The Town of Chatham 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 Town of Chatham Board of Health may suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, 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.

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

7.4 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.

SECTION VIII EFFECTIVE DATE

This regulation was promulgated on June 15, 1998. This regulation shall be effective as of January 1, 1999.

Revisions shall become effective on January 3, 2008

Revisions shall become effective July 7, 2011

Revisions shall be effective January 1, 2014

Revisions shall be effective September 1, 2019

Signed:

John Beckley, Chairman

Edward Sheehan, Vice Chairman

Ronald Broman, Member

Burton Segall, Member

Bernard Pfeifer, M.D, Member

Allen Ward, M.D., Alternate Member