Tyngsborough Board of Health

Town Hall
25 Bryants Lane
Tyngsborough, MA01879
Office: (978) 649-2300 Ext 118
FAX: (978) 649-2301

Regulation of the Tyngsborough Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

1. 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];

1. Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station[2];

2. Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes[3];

3. Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin[4] and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development[5];

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

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

3CDC Office of Smoking and Health, National *Youth Tobacco Survey, 2009.* Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

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

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

4. Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

5. Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth[6];

6. Whereas sales of flavored little cigars increased by 23% between 2008 and 2010[7]; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;[8]

7. Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,[9] largely because these flavored products were marketed to youth and young adults,[10] and younger smokers were more likely to have tried these products than older smokers;[11]

8. Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,[12] neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

6CDC (2009), Youth *Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: http:www.cdc.gov/mmwr/pdf/ss/ss5905.pdf.

7Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

8SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health.*

921 U.S.C. § 387g.

10Carpenter CM, Wayne GF, Pauly JL, et al. 2005. "New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies." *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. "Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands." *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. "Sweet and Spicy Flavours: New Brands for Minorities and Youth." *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, *www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf*.

11U.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*.

1221 U.S.C. § 387g

9. Whereas the U.S. Food and Drug Administration (FDA) 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;[13]

10. Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;[14]

11. Whereas tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine;[15]

12. Whereas the U.S. Centers for Disease Control and Prevention (CDC) has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;[16]

13. Whereas nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;[17]

14. Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for

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13Food 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.

14King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health.* [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

15U.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.

16Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

17Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette NicotineSolutions." *Tobacco Control.* [Electronic publication ahead of print], http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.* Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

one;[18]

15. Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.3% in 2011;[19]

16. Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported;[20]

17. Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history;[21]

18. Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%;[22]

19. Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes;[23]

20. Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes.

18Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm.

19CDC (2011) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2012: 87 (No SS-61)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

202010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

21Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

22Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey.* American Journal of Public Health, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?,* J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.nebi.nim.gov/pubmed/21809109.

23National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer.* Retrieved from: http://www.cancer.govb/cancertopics/factsheet/Tobacco/cigars.

High excise taxes encourage adult smokers to quit[24] and high prices deter youth from starting.[25] Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

21. Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB);[26]

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

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

24. 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."[27]

Now, therefore the Tyngsborough Board of Health (Board) intends to regulate the sale of tobacco products.

24Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas,* Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

25Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking* and Tobacco Control Monograph 14: *Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: http://dccps.nih.gov/TCRB/monographs/.

26TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: http://www.ttb.gov/statistics/2010/201012tobacco.pdf.

27Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

B. **Authority:**

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

C. **Definitions:**

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

1. 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.
1. Board: the Tyngsborough Board of Health
2. 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.
3. 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 M.G.L. c. 64C, § first paragraph.
4. Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.
5. Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
6. 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.
7. Distinguishable: Perceivable by either the sense of smell or taste.
8. Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.
9. Employee: Any individual who performs services for an employer.
10. Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one or more employees.
11. Flavored tobacco product: Any tobacco product or component part 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.
12. Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or

subject to licensing, by the Massachusetts Department of Public Health (DPH) under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

13. Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.
14. M.G.L. c._____, § _____: Massachusetts General Laws Chapter _____, Section _____.
15. 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.
16. 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.
17. Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.
18. 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 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Board.
19. Schools: Public or private elementary or secondary schools.
20. Self-Service Display: Any display from which customers may select a tobacco product or a nicotine delivery product without assistance from an employee or store personnel.
21. Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.
22. Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by M.G.L. c. 270, § 22, to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue (DOR) "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".
23. 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 FDA 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.
24. Tyngsborough: Town of Tyngsborough

25. 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.

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

1. No person shall sell tobacco products or permit tobacco products, as defined in this regulation, to be sold to a person under the minimum legal sales age; or not being the minor's parent or legal guardian, give tobacco products as defined in this regulation to a person under the minimum legal sales age. The minimum legal sales age in Tyngsborough is 18.

2. Required Signage

   a. In conformance with and in addition to M.G.L. c. 270, § 7, a copy of M.G.L. c. 270, § 6, shall be posted conspicuously by the owner or other person in charge in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the DPH and made available from the Board. 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 shall conspicuously post any additional signs required by the DPH.

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

   c. The owner or other person in charge of a shop or other place used to sell tobacco products as defined in this regulation at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 18 years of age 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 4 feet or greater than 9 feet from the floor.

3. Identification: Each person selling or distributing tobacco products as defined in this regulation 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 18 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products as defined in this regulation must be face-to-face between the seller and the buyer and occur at the permitted location.

E. **Tobacco Sales Permit:**

1. No person shall sell or otherwise distribute tobacco products as defined in this regulation within the Tyngsborough without first obtaining a Tobacco Sales Permit issued annually by the Board. Only owners of establishments with a permanent, non-mobile location in Tyngsborough are eligible to apply for a permit and sell tobacco products at the specified location in Tyngsborough.

2. As part of the Tobacco Sales Permit application process, the applicant will be provided with the Board 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 about this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the DOR before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined annually by the Board .

5. A separate permit is required for each retail establishment selling tobacco products as defined in this regulation.

6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products until such employee reads this regulation and federal and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he or she has read the regulation and applicable state and federal laws.

8. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his or her retail establishment to ensure compliance with this regulation.

10. 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 has not satisfied any outstanding permit suspensions.

11. A Tobacco 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. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 60 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products.

F. **<u>Cigar Sales Regulated</u>:**

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.

2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at $5.00 or more.

3. This Section shall not apply to:

    a. The sale or distribution of any single cigar having a retail price of $2.50 or more.

b. A person engaged in the business of selling or distributing cigars for commercial purposes to another person engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Tyngsborough.

4. The Board h may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. **Sale of Flavored Tobacco Products Prohibited:**

1. No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product at retail, except in retail tobacco stores and smoking bars.

H. **Prohibition of the Sale of Blunt Wraps:**

1. No person shall sell or distribute blunt wraps in Tyngsborough.

I. **Free Distribution and Coupon Redemption:**

1. No person shall distribute, or cause to be distributed, any free samples of tobacco products as defined in this regulation. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the DOR shall be accepted by any permit holder.

J. **Out-of-Package Sales:**

1. The sale or distribution of tobacco products as defined in this regulation 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 20 cigarettes, including single cigarettes.

K. **Self-Service Displays:**

1. All self-service displays of tobacco products as defined in this regulation are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only self-service displays that are permissible pursuant to FDA and Massachusetts Attorney General regulations found at 940 CMR 21.00 and 940 CMR 22.00 are displays that are located in Retail Tobacco Stores that ensure that no person younger than 18 years is present, or permitted to enter, at any time.

L. **Vending Machines:**

1. All tobacco product vending machines are prohibited.

M. **Non-Residential Roll-Your-Own Machines:**

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

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

1. No health care institution located in Tyngsborough shall sell or cause to be sold tobacco products as defined in this regulation. No retail establishment that operates or has a health care institution within it,

such as a pharmacy or drug store, shall sell or cause to be sold tobacco products as defined in this regulation.

O. **Prohibition of the Sale of Tobacco Products by Educational Institutions:**

1. No educational institution located in Tyngsborough shall sell or cause to be sold tobacco products as defined in this regulation. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

P. **Violations:**

1. The establishment, permit holder and/or his or her business agent shall ensure compliance with all sections of this regulation. The violator shall receive:

   a. In the case of a first violation, a fine of $100.00.

   b. In the case of a second violation within a 24 months of the date of the current violation, a fine of $200.00 and the Tobacco Product Sales Permit shall be suspended for 7 consecutive business days.

   c. In the case of three or more violations within a 24 month period, a fine of $300.00 and the Tobacco Product Sales Permit shall be suspended for 30 consecutive business days.

   d. In the case of further violations or repeated, egregious violations of this regulation within a 24 month period, the Board of Health may revoke a Tobacco Product Sales Permit.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for 30 consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board issued permits for 30 consecutive business days.

4. The Board shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons for the suspension and establish a time and date for a hearing, which date shall be no earlier than 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 in writing of the Board's decision and the reasons for such suspension. After a hearing, the Board shall suspend or revoke the Tobacco Product Sales Permit if the Board 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 or under the Massachusetts General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

Q. **Non-Criminal Disposition:**

1. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in M.G.L. c. 40, § 21D, or by filing a criminal complaint at the appropriate venue.

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

R. **Enforcement:**

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

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

S. **Severability:**

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

T. **Effective Date:**

1. This regulation shall take effect on January 11, 2016.

Sheila Perrault, Chair

Bernadette Harper, Vice-Chair

Steve Berthiaume

Joseph DelGaudio