

ARTICLE VI
Regulation Restricting Sale and Use of Tobacco and Nicotine Delivery Products

§ 305-6.1. 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 and where the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year;² and whereas the U.S. Environmental Protection Agency classified secondhand smoke as a known human carcinogen;³ now therefore, the Board of Health of Sherborn recognizes the right of those who wish to breathe smoke-free air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in public places and workplaces.

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;⁴

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;⁵

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁶ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development;⁷

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

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;⁸

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

2. McGinnis JM, Goege W, "Actual Causes of Death in the United States", *JAMA* 1993 270:2207-2212).

3. IARC-WHO, 2002.

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

5. CDC 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.

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

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

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

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010;⁹ and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black and Mild, White Owl, and Swisher Sweets;¹⁰

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹¹ largely because these flavored products were marketed to youth and young adults,¹² and younger smokers were more likely to have tried these products than older smokers;¹³

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹⁴ neither federal nor Massachusetts laws restrict sales of flavored noncigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

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;¹⁵

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;¹⁶

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;¹⁷

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;¹⁸

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

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

11. 21 U.S.C. § 387g.

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

13. 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.

14. 21 U.S.C. § 387g

15. 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.

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

17. U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

18. Centers for Disease Control and 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.

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;¹⁹

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 one;²⁰

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;²¹

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;²²

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;²³

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%;²⁴

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes;²⁵

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. High excise taxes encourage adult smokers to quit²⁶ and high prices deter youth from starting.²⁷ Inexpensive cigarettes, like those produced from RYO machines, promote the use of

19. Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmjjournals.org/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.
20. Food and Drug Administration, Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.
21. CDC (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)].
22. 2010 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.
23. Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeoehhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.
24. Ringel, J., Wasserman, J., and Andreyeva, T. (2005) Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?, *J. Prim. P. 2011, Aug: 32(3-4):161-70*. Retrieved from: www.ncbi.nlm.nih.gov/pmc/articles/PMC3189109/.
25. National Institute of Health (NIH), National Cancer Institute (NCI) (2010). Cigar Smoking and Cancer. Retrieved from: <http://www.cancer.gov/bcancertopics/factsheet/Tobacco/cigars>.
26. Eriksen, M., Mackay, J., Ross, H. (2012). The Tobacco Atlas, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.
27. Chaloupka, F. J. and 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/>.

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;

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);²⁸

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;

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;

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."²⁹

Now, therefore it is the intention of the Sherborn Board of Health to regulate the sale and use of tobacco and nicotine delivery products.

§ 305-6.2. Authority.

This regulation is promulgated pursuant to the authority granted to the Sherborn Board of Health by MGL c. 111, § 31, that "Boards of Health may make reasonable health regulations." It is also promulgated pursuant to MGL c. 270, § 22(j), which stats in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation; any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

§ 305-6.3. Definitions.

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

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.

BOARD — Board of Health of the Town of Sherborn.

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

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

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, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to 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.

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 MGL c. 64C, § 1, Paragraph 1.

COMPONENT PART — Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

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

DISTINGUISHABLE — Perceivable by either the sense of smell or taste.

E-CIGARETTE — Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine and or liquid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookahs, or under any other product name.

EDUCATIONAL INSTITUTION — Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

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 or more employees.

ENCLOSED — A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room or hallway.

ENTITY — Any single individual, group of individuals, corporation, partnership, institution, employer, association, firm, or any other legal entity whether public or private.

FLAVORED TOBACCO PRODUCT AND FLAVORED NICOTINE DELIVERY PRODUCT — Any tobacco product or nicotine delivery product, including e-cigarettes defined herein, 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 nicotine delivery product, including e-cigarettes as defined herein, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such

product, that such product has or produces a characterizing flavor shall constitute presumptive evidence that the product is a flavored tobacco product or nicotine delivery product, including e-cigarettes as defined herein.

HEALTH CARE INSTITUTION — An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under MGL 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, drugstores, doctor offices and dentist offices.

MINIMUM LEGAL SALES AGE (MLSA) — The age an individual must be before that individual can be sold a tobacco product in the municipality.

NICOTINE DELIVERY PRODUCT — Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

NONRESIDENTIAL 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 nonresidential RYO machines.

OUTDOOR SPACE — An outdoor area, open to the air at all times, that cannot be enclosed by a wall or side covering.

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 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.

PRIVATE CLUB — Any not-for-profit entity created and organized pursuant to MGL Chapter 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather is distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a "club license" or a "war veterans club license" as defined in MGL c. 138, § 12, and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

PUBLIC PLACE — Any building or facility owned, leased, rented, operated and/or occupied by the Town of Sherborn, including school buildings and grounds; outdoor athletic and recreational facilities and their parking lots; any area open to the general public, including but not limited to restaurants, bar areas of restaurants, bars, auditoriums, licensed child-care locations and other child-care facilities, schools and school property, public and private educational facilities, clinics,

hospitals, health care facilities, nursing homes, long-term care facilities, public libraries, municipal buildings, private clubs, museums, theaters, retail stores, laundromats, haircutting establishments, salons, massage and body art establishments, retail food establishment, fast-food or take-out food facilities, indoor sports arenas, public transit facilities, enclosed shopping malls, common areas in privately owned buildings, common areas in public access buildings, any clubs, rooms or halls when open to the public or when used for public meetings, all areas available to and customarily used by the public in all businesses and nonprofit entities patronized by the public, including, but not limited to, attorneys' offices and other offices, banks, hotels and motels, stairwells, hallways, entranceways, waiting areas, lobbies, public restrooms, and elevators accessible to the public.

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 Sherborn Board of Health.

SCHOOLS — Public or private elementary or secondary schools.

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.

SMOKE CONSTITUENT — Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

SMOKING — The inhaling, exhaling, burning, holding or carrying of any lighted cigar, cigarette, pipe, or other lighted tobacco product in any form or other tobacco products or nontobacco products designed to be combusted and inhaled.

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 MGL c. 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."

TOWN — The Town of Sherborn, Massachusetts.

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, any other tobacco products.

WORKPLACE — Any enclosed area of a structure or portion thereof at which one or more employees perform services for their employer (including the personal residence of the employer during those hours when used as a place of employment). It also includes motor vehicles, employee lounges, restrooms, conference rooms, hallways, stairways and entranceways, as well as exterior, unenclosed spaces at stairs, ramps, landings, patios, porches, decks, and adjacent yards, loading docks and other areas within 20 feet of the entrance doors or other areas where smoke would migrate into the enclosed area of a structure.

§ 305-6.4. Smoking prohibited.

- A. It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace.
- B. Smoking is prohibited in Sherborn in accordance with MGL c. 270, § 22 (commonly known as the "Smoke-Free Workplace Law").
- C. Pursuant to MGL c. 270, § 22(j), smoking is also hereby prohibited in:
 - (1) Retail tobacco stores.
 - (2) Outdoor patios, porches, decks of establishments.
 - (3) Within 20 feet of entranceways to establishments.
 - (4) Private clubs.
- D. Smoking bars are prohibited in the Town of Sherborn.
- E. The use of e-cigarettes is prohibited wherever smoking is prohibited pursuant to MGL c. 270, § 22, and Subsection C of this section.
- F. Nothing in this regulation shall prohibit any establishment from becoming voluntarily completely smoke-free.

§ 305-6.5. Retail sale of tobacco and nicotine delivery products.

- A. No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery 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 or nicotine delivery products as defined herein to a person under the minimum legal sales age. The minimum legal sales age in Sherborn is 21.
- B. Required signage.
 - (1) In conformance with and in addition to MGL c. 270, § 7, a copy of MGL c. 270, § 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Sherborn Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
 - (2) The owner or other person in charge of a shop or other place used to sell tobacco and/or nicotine delivery products at retail shall conspicuously post signage provided by the Sherborn Board of Health that discloses current referral information about smoking cessation.

(3) The owner or other person in charge of a shop or other place used to sell tobacco and/or nicotine delivery products as defined herein at retail shall conspicuously post a sign stating that "The sale of tobacco and nicotine delivery products, including e-cigarettes, to someone under the minimum legal sales age of 21 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 four feet or greater than nine feet from the floor.

C. Identification. Each person selling or distributing tobacco and/or nicotine delivery 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.

D. All retail sales of tobacco and/or nicotine delivery products as defined herein must be face-to-face between the seller and the buyer and occur at the permitted location.

§ 305-6.6. Tobacco and nicotine delivery sales permit.

A. No person shall sell or otherwise distribute tobacco and/or nicotine delivery products as defined herein within the Town of Sherborn without first obtaining a tobacco and nicotine delivery sales permit (permit) issued annually by the Sherborn Board of Health. Only owners of establishments with a permanent, nonmobile location in Sherborn are eligible to apply for a permit and sell tobacco and/or nicotine delivery products at a specified location in Sherborn.

B. As part of the permit application process, the applicant will be provided with the Sherborn Board of Health 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 and/or nicotine delivery product sales regarding federal, state and local laws regarding the sale of tobacco and/or nicotine delivery products and this regulation.

C. Each applicant who sells tobacco and/or nicotine delivery products is required to provide proof of a current tobacco retailer license issued by the Massachusetts Department of Revenue before a permit can be issued.

D. The fee for a permit shall be determined by the Sherborn Board of Health annually.

E. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products as defined herein.

F. Each permit shall be displayed at the retail establishment in a conspicuous place.

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

- H. A permit is nontransferable. A new owner of an establishment that sells tobacco and/or nicotine delivery 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.
- I. Issuance of a permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- J. A 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.
- K. As a condition for obtaining and/or renewing a permit, the Sherborn Board of Health may require tobacco and/or nicotine delivery product retailers and any employee involved in the act of selling tobacco and/or nicotine delivery products to participate in training programs provided or approved by the Board regarding compliance with the laws and regulations prohibiting the sale of tobacco and/or nicotine delivery products to minors and to individuals as stated in herein.

§ 305-6.7. Cigar packaging and sales.

- A. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four cigars. The four-pack must be priced at the retail market price or \$5, whichever price is higher.
- B. This section shall not apply to:
 - (1) The sale or distribution of any single cigar having a retail price of \$2.50 or more.
 - (2) 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 Sherborn.
- C. The Sherborn 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.

§ 305-6.8. Sale of flavored tobacco and nicotine delivery products prohibited.

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco or nicotine delivery product.

§ 305-6.9. Sale of blunt wraps prohibited.

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

§ 305-6.10. Free distribution and coupon redemption.

No person shall distribute, or cause to be distributed, any free samples of tobacco or nicotine

delivery products as defined herein. No means, instruments or devices that allow for the redemption of tobacco or nicotine delivery products for free or cigarettes at a price below the minimum retail price as determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

§ 305-6.11. Out-of-package sales.

The sale or distribution of tobacco and nicotine delivery products as defined herein in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any 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.

§ 305-6.12. Self-service displays.

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

§ 305-6.13. Vending machines. [Amended 7-17-2024]

All tobacco product defined herein as vending machines are prohibited.

§ 305-6.14. Nonresidential roll-your-own machines.

All nonresidential roll-your-own machines are prohibited.

§ 305-6.15. Sale of tobacco and nicotine delivery products by health care institutions prohibited.

No health care institution located in Sherborn shall sell or cause to be sold tobacco or nicotine delivery products as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drugstore, shall sell or cause to be sold tobacco or nicotine delivery products as defined herein.

§ 305-6.16. Sale of tobacco and nicotine delivery products by educational institutions prohibited.

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

§ 305-6.17. Violations and penalties.

- A. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:
 - (1) In the case of a first violation, a fine of \$100 and the tobacco and nicotine delivery product sales permit (where applicable) may be suspended for seven consecutive business days.

(2) In the case of a second violation within a twelve-month period of the date of the current violation, a fine of \$200 and the tobacco and nicotine delivery product sales permit (where applicable) may be suspended for 14 consecutive business days. **[Amended 7-17-2024]**

(3) In the case of three or more violations within a twelve-month period, a fine of \$500 and the tobacco and nicotine delivery product sales permit (where applicable) may be suspended for up to 60 consecutive business days.

(4) In the case of further violations or repeated, egregious violations of this regulation within a twelve-month period, the Board of Health may revoke a tobacco and nicotine delivery product sales permit.

B. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of a permit for 30 consecutive business days.

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

D. The Sherborn Board of Health shall provide notice of the intent to suspend or revoke a 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 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 Sherborn Board of Health may suspend or revoke the 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 noncriminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco and nicotine delivery products shall be removed from the retail establishment upon suspension or revocation of the permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

§ 305-6.18. Noncriminal disposition.

A. Whoever violates any provision of this regulation may be penalized by the noncriminal method of disposition as provided in MGL c. 40, § 21D, or by filing a criminal complaint at the appropriate venue.

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

§ 305-6.19. Enforcement.

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

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

§ 305-6.20. Severability.

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

§ 305-6.21. Effective date.

This regulation shall take effect on June 1, 2014.