



Needham Board of Health

REVISED AGENDA

Friday May 10, 2019

7:00 – 9:00 a.m.

**Multi-Purpose Room
Rosemary Recreation Complex
178 Rosemary Street, Needham MA 02494**

- **7:00 to 7:05 – Welcome & Review of Minutes (April 12th)**
- **7:05 to 7:40 – Staff Reports (April)**
- **7:40 to 7:50 – 260 – 267 Cartwright Road Sub-Division – Board of Health Vote to Release Off-Street Drainage Bond**
- **7:50 to 8:10 – Board of Health Vote 2013 FDA Food Code and 2015 Food Code Supplement and Annex 1**
- **8:10 to 8:30 – Vaping, Youth Use, Tobacco Regulations, and Tobacco Compliance Check Results**
- **8:30 to 8:50 – Ongoing Pest and Trash Management Challenges**
- **8:50 to 8:55 – Discussion of 2019 Annual Town Meeting**
- **Other Items**
- **Next Meeting (tentatively June 14th, 7:00 – 9:00 a.m.)**
- **Adjournment**

(Please note that all times are approximate)

Substance Use Prevention and Education ~ Initiative Highlights

Needham NPHD, Needham SPAN and Substance Abuse Prevention Collaborative (SAPC) grant* collaboration with the towns of Dedham, Needham, Norwood and Westwood.

SAPC grant

Town coalition meetings:

Dedham coalition: April 2nd 6:00pm Dedham Town Hall

Impact Norwood coalition: April 11th 3:00pm Norwood High School library

Westwood Cares coalition: *No meeting scheduled*

Needham SPAN coalition: *No meeting scheduled*

SAPC program, capacity building and strategy implementation preparation:

(1) TIPs alcohol licensee trainings, Monday, June 3rd Section 12 and Section 15 licensees (9:30am-2:30pm | 3:00pm-8:00pm) American Legion, Dedham Planning and logistic follow-up, Survey monkey registration links, event flyer creation and event promotion (online and hard copy) (2) Outreach for attendance and funding allocation TIPs *Train the Trainer* SAPC stakeholder training, June 17th and 18th Norwood Police Department (3) May 29th panel presentation: SAPC grant Alcohol Policy tool kit- peer presentation planning SAPC Program Managers- MassTAPP TA team (4) SAPC FY19 budget line item adjustments, protocol for review and approval.

SAPC Leadership Team: April 8th (1) *AlcoholEdu for High School students* curriculum, updates on student engagement participation by school (2) TIPs Trainings: Monday, June 3rd 2 training sessions 9:30am-2:30pm and 3:00pm-8:00pm Section 15 & Section 12 combined 5 hours (3) TIPs *Train the Trainer*: 2 day program, \$499.00 per person, Individual town participation numbers (4) SAPC Regional Compliance Check (CC) update: Sales to minors by town data available.

MDPH- BSAS FY19 budget: April 2nd Amal Marks, SAPC Project Manager. Review and discussion of Needham SAPC FY19 line item adjustment priorities. Unspent salary funds in UFR #133 Youth Engagement Project Coordinator.

Prevent- Promote commission: April 3rd WebEx Kirsten Doherty, MPH, MOAR. Member state Commission on Community Behavioral Health Promotion and Prevention. Review recommendations from Commission report, prior to the passing of the CARE Act legislation. Strategic planning on implementation at the local level, feedback to be presented during April Commission meeting. Katie Sugarman, Liz Parsons, Tracy Desovich and MOAR staff.

Dedham Public Health Department: April 3rd Jessica Tracy, Public Health nurse, Krissy King, DFC grant Program Manager. Review and discussion on protocols and structures for Parent Survey 2019 creation and SAMHSA- ONDCP grant compliance reporting parameters.

SAPC Manager-MassTAPP Alcohol Policy: April 12th D.J. Wilson, J.D, MMA, Tracy Desovich, MassTAPP Technical Assistance. Liz Parson, Melrose SAPC, Colin Gallant, Hudson SAPC, Heather Warner, SAPC Northampton. Planning: Content and structure for Alcohol Policy tool kit presentation, SAPC Program Managers, May 29th. Community readiness, related access data, planning stakeholder meetings, strategies to impact access including alcohol regulations, compliance checks, TIPs alcohol licensee training and zoning templates to include sensitive use area designations and research backed protocols that support limiting outlet density.

MDPH- BSAS Conference: April 23rd *Exploring Our Roles in Creating a More Just World for Youth.* Keynote: *Confronting Our Fears and Organizing with Love*, Eroc Arroyo-Montano, Director Cultural Organizing, United for Fair Economy. Janet Connors, Community and Social Justice Activist, *CIRCLE-UP: What Does Justice Mean to You?* Carly Caminiti, MPH, Health Resources in Action (HRIA) *Prioritizing Youth in Public Health Efforts.* Welcome: Stephanie Campbell, Acting Director, Office of Sexual Health and Youth Development, Justine Egan, Epidemiologist- Mass. Department of Public Health.

Frameworks Institute training: April 30th *Reframing Substance Use Prevention Messages* Clara Gibbons, Research Interpretation & Application analyst. Collaboration with Braintree Community Partnership on Substance Use and Impact Quincy. Lyn Frano, CPS, Town of Braintree and Alejandro Rivera, Vice President, Prevention, Bay State Community Services. 9:30am-4:00pm.

Needham Public Health Division:
NPHD – SPAN initiatives:

NPHD programs meeting preparation outreach for research and resource gathering:
(1) NPHD March monthly report (2) Metrowest Substance Abuse Prevention Alliance (SAPA) letter of support submission, Metrowest Health Foundation spring grant application, Dr. Amy Turncliff (3) Needham CCIT protocol review, service provider confidentiality options, new attendee approval (4) Commercial marijuana regulation review, MDPH transfer to CCC- contact with Chief John Carmichael, member Cannabis Advisory Board.

Newton Wellesley Hospital community partnership meeting: April 4th Lauren Lele, MPA, Director, Community Benefits and Volunteer Services. Natick, Newton, Needham, Waltham, Wellesley and Weston Public Health and social services collaboration. Introduction of pilot program to create a mobile health environment primarily, mobile health van). We are in collaboration with Greenfield Labs, Division of FORD Motor Company. Alex Ryan, Project Lead, and Ruth McLachlin from Greenfield Labs via WebEx.

Needham Public Health Division staff meeting: April 9th Director and staff work activity updates. Review and discussion: staff engagement in town Solution Teams, accreditation components including prevention as public health, structures we use for strategic planning in program identification and prioritization and newly created Board of Health orientation packets.

Community Crisis Intervention Team (CCIT): April 10th Collaboration to support residents navigating acute and chronic substance use disorders and/or mental health conditions. Core Team: Lt. Chris Baker, Sgt. John McGrath and Katie McCullough, Needham Police Department, Tiffany Zike, RN, MPH, Donald Anastasi, Deputy Fire Chief, Ed Sullivan, EMS Supervisor, Jessica Moss, LICSW, Kristen Lindley, LICSW and Kerrie Cusack, LICSW Senior Services, Sara Shine, Director, Needham Youth & Family Services, Catherine Delano, MPH, NPHD and Chris Louzon, Director, Riverside Emergency Services. Jenna Malgeri, DMH Central Mass. Case Manager Adult

Needham Board of Health meeting: April 12th Directors Report, staff reports of public health initiatives, resident support programs and prevention initiatives. Town election April 10th new board member introductions, Christina S. Mathews and Robert A. Partridge. April agenda: Board of Health Fees and Charges, 2013 FDA Food Code and Annex 1, draft “Plan for Health” Toolkit to assist local Public Health and Planning/Zoning Departments and Discussion of Warrant for 2019 Annual Town Meeting.

SAPC grant FY19 budget review: April 16th Tim McDonald, Michelle Vaillancourt, Town Accountant and Dawn Stiller, HHS. Review of FY19 expenditures by UFR code, unobligated funds and unspent funds. SAPC Leadership Team priority overview of FY19 line item adjustments as approved by Amal Marks, BSAS. EIM system line item adjustments pending.

NPHD – CCIT capacity: April 16th Donna Carmichael. Review of resident support capacity, acute SUD- SMI client responses by town service providers. Options for addiction psychiatry consultation to confirm support strategies and expand on options for referral after extended support outreach. Next steps: Social Work and Public Health nurse discussion.

Town Accountant: April 17th Conference call. SAPC grant expense reimbursement March 2019. Michelle Vaillancourt, Town Accountant, Dawn Stiller, NPHD Office Manager. Virtual Gateway EIM system.

Health & Human Services Department training: April 25th Jon Wortman. *How to Use Your Capacity: 10 Skills to Increase Your Energy Management*. Including primarily: time banking, setting boundaries, commitment mapping and preventing decision fatigue.

Resident Support: Respond to calls and/or meeting requests related to mental health conditions and/or substance use disorder. Referral to Riverside Emergency Services 24/7 support and counseling, assessment, treatment and recovery resources.
F 62 yrs.- SUD- SMI – M 42 yrs. SUD- alcohol

Town holiday: (1 day) April 15th

Respectfully submitted by Carol Read May 6, 2019

*SAPC technical assistance calls, coordinator meetings, and compliance related to the SAPC grant program are extensively documented in the BSAS-SAPC online quarterly reports.

Page 3 of 3 Pages End



NEEDHAM PUBLIC HEALTH DIVISION



Unit: Substance Use Prevention

Date: April 2019

Staff: Catherine Delano, Karen Shannon, Karen Mullen, and Monica DeWinter

Summary: SPAN successfully held “JUULING and Schooling” an educational event for the community about youth vaping. The SPAN action teams and Steering Committee held their monthly meetings. Youth Mental Health First Aid was held over two sessions for community members. SALSA students held classes at Pollard.

Activities and Accomplishments

Activity	Notes
SPAN Steering Committee Meetings	John Wortmann: Working with diverse teams.
Action Team Meetings	Students updated group re: SALSA PSA and Distracted Driving initiative & requested support/input; Discussed issues/opportunities for student Guidance support at NHS and Pollard; Juuling & Schooling/Vaping event planning; Family Dinner project discussion; discussed policy initiatives.
“Juuling and Schooling” and Hidden in Plain Sight (HIPS) event	75 community members attended evening vaping presentation by Dr. Jonathan Winickoff, pediatrician at Mass General Hospital. HIPS exhibit ran concurrently with presentation.
Prevention Team Meeting	SPAN Action Team updates, event logistics for vaping and HIPS event.
Hidden in Plain Sight exhibit	1 parent attended evening exhibit.
Update the HIPS Resource list with accurate URLs	
Prepare Twitter messages	Theme: Alcohol - Social host laws, safety plan, prom & grad season, make the call, teen-safe.org link.
Met with new BUSPH graduate intern	Madeleine Arthur will begin in June as graduate intern for the Prevention Team.
MWHF Grant Mental Health First Aid	Provided Youth Mental Health First Aid Course to ten community members.
SALSA Vaping Awareness Initiative Meetings	Team meetings to prepare/rehearse proposal, Presentation to NHS Administration.
SALSA at Pollard/Wellness Classes	SALSA students taught refusal skills and corrected misconceptions about substance use at NHS (80 Pollard 8 th graders). Group Rehearsals for 4/4 and 4/5 events.

Needham Public Health Division

April, 2019 Monthly Report

Maryanne Dinell- Traveling Meals Program Coordinator

Monthly

<i>Description</i>	<i>Reason</i>	<i>Notes/Follow-Up (ongoing, completed, etc.)</i>
Residents needing the Traveling Meals April, 2109	Unable to shop or prepare their own meal.	41 clients on the Traveling Meals Program 30 Springwell Elder Services, Waltham clients 11 private pay clients - Needham residents
21 delivery days in April. 41 consumers enrolled in the Traveling Meals Program	28 Clients receive meals 5 days per week 14 Clients receive meals 3 days a week 1 Client receives meals for 7 days	654 meals delivered @ 5.62 per meal =cost of \$3669.86 493 meals delivered to Springwell Clients 161 meals delivered to private pay residents
4 Clients no longer need Program	2 Private Pay 2 Springwell	2 Clients -now able to care for self 1 client moved to another community 1 Client passed away
3 new clients On Program	2- 1 st time on Program 1-re-enrollment	1-Anxiety, depression 1- Hip replacement 1- Arthritis

<i>Category</i>		<i>Jul</i>	<i>Aug</i>	<i>Sept</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>FY '18 Total</i>	<i>FY '19 Total</i>	
Meal Delivery		560	660	540	644	536	528	535	541	649	654			7759	5847	
General Telephone Calls-received		29	62	22	38	65	77	26	32	50	41			547	442	
Assistance Calls-to Springwell		4	2	2	2	3	3	6	4	3	7			51	36	
Not at home at delivery		4	3	6	5	4	2	4	2	2	5			38	37	
911		1	0	0	0	0	0	0	0	0	0			0	1	

<i>Category</i>		<i>Jul</i>	<i>Aug</i>	<i>Sept</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>FY '18 Total</i>	<i>FY '19 Total</i>	

Meetings, Events, and Trainings

<i>BI</i>	<i>Type</i>	<i>Description/Highlights/Votes/Etc.</i>	<i>Attendance</i>
Board of Health Meeting		Monthly Board meeting held at Rosemary Complex	Staff and Board Members
Training		Food Code 2013 Training	
HHS		Time Management Training	All Staff

Donations, Grants, and Other Funding [List any donations received, grants funded, etc. over the past month.]

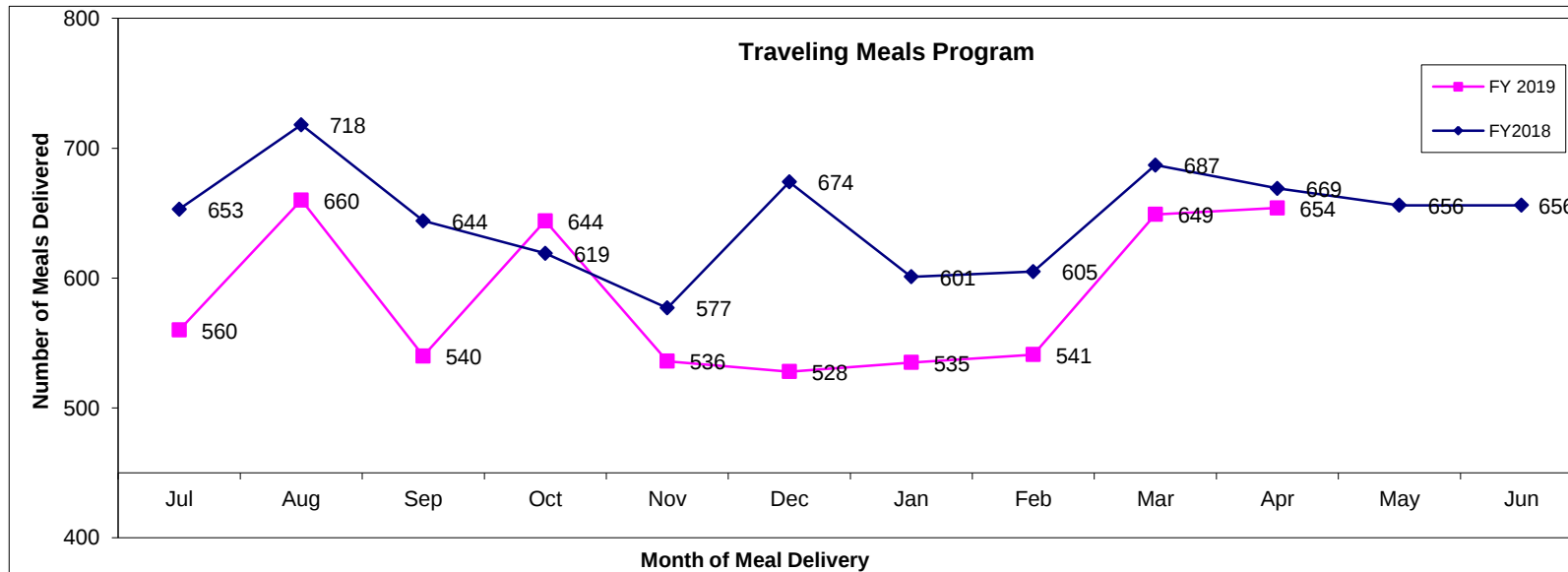
<i>Description</i>	<i>Type (D,G,O)</i>	<i>Amount Given</i>	<i>Source</i>	<i>Notes</i>

Traveling Meals Program

April, 2019

Projected-12 Mo.	
\$	38,676.45
#	7,016.40

Month	# Meals FY2018	# Meals FY2019	FY19 Cost	% Change # Meals
<u>Jul</u>	653	560	\$3,147.20	-14%
<u>Aug</u>	718	660	\$3,709.20	-8%
<u>Sep</u>	644	540	\$3,034.80	-16%
<u>Oct</u>	619	644	\$3,683.68	4%
<u>Nov</u>	577	536	\$3,012.32	-7%
<u>Dec</u>	674	528	\$2,967.36	-22%
<u>Jan</u>	601	535	\$3,006.70	-11%
<u>Feb</u>	605	541	\$3,040.42	-11%
<u>Mar</u>	687	649	\$3,647.38	-6%
<u>Apr</u>	669	654	\$3,675.48	-2%
<u>May</u>	656			
<u>Jun</u>	656			
Totals:	7,759	5,847	32,924.54	



Needham Public Health Division

April 2019

Assist. Health Dir. - Tara Gurge

Health Agents - Diana Acosta and Monica Pancare

Activities

Activity	Notes
FDA Grant Standard 9 Intervention Training letters sent	3 – FDA Forum Trainings conducted*: - Group Forum Intervention Trainings conducted by Pamela Ross Kung. Presentations focused on the top food borne illness risk factors found to be out of compliance in Needham (data from risk factor surveys collected last fall.) - 3 sessions were held: - o April 24th, 2-4 pm - 51 attendees - o April 24th, 5:30 – 7:30 pm - 13 attendees - o April 30th, 9:30-11:30 am – 50 attendees * We received a lot of positive feedback from the attendees that attended these informative trainings.
Demo Reviews/ Approvals	2 - Demolition sign-offs: • 3 Wayne Road • 1124 Central Ave.
Farmer's Market Permits (Seasonal)	5 – Farmers Market Permits issued: - Ackermann Maple Farm (previous vendor) - Doris' Peruvian Pastries (new vendor) - Native Colombian Food (previous vendor) - Chestnut Farms (previous vendor) - Peg's Preserves (new vendor) 1 – Farmers Market Permit Application received: - Del Sur (new vendor)
Food – Temporary Food Event Permits	14 – Temporary Food Permits issued to: - Sam's Hot Dog @ Pansy Day - Knights of Columbus Trivia Night - Knights of Columbus Craft Beer Night - Sam's Hot Dog @ BID Event - Chubby Chickpea @ BID Event - Needham High School BBQ - Gifford Cat Shelter - Abbotts @ Summer Fair - Newton Needham Chamber of Commerce @ Summer Fair - High Rock Pollard PTC - Landmark News Group @ Bay State Conference Relay @ DeFazio - Great Hall Performance - Presbyterian Church Yard Sale - Needham Baseball Opening Day @ DeFazio
Food – Mobile Trucks	2 – Mobile Food Trucks inspected: - Chubby Chickpea - Chicken and Rice Guys 1 – Mobile Food Truck seasonal permit issued: - Chicken and Rice Guys
Food – Food Permit Plan Reviews (Updates)/ Permits	1 – Food Permit Plan Reviews conducted for: - <u>Hungry Coyote</u> – Submitted plan review. Awaiting items. 4 – Food Establishment looking to start their Pre-operation inspection process:

Issued	- <u>Eat Well – (Still Pending)</u> Pre-operation inspections pending. (No update) - <u>Servente Bakery & Café</u> – Permit packet and fees received. Awaiting bathroom renovations. Pre-operation insp. pending. (No update) - <u>Pancho's Taqueria</u> – Updated kitchen layout plan still pending for review. (On-going) - <u>Forklift Catering</u> – To take over vacant #301 Reservoir St. location. (Plan review on-going) 1 – Food establishment annual permit issued: - <u>Junction Ice Cream</u>
Food Complaints	4/4 – Food Complaint/Follow Up: - <u>Sweet Basil</u> – A customer called to report feeling ill after eating at Sweet Basil. They did not follow up with a doctor so a foodborne illness was never confirmed. In following up, the customer mentioned they were sick while dining in the establishment. Diana followed up with the establishment and conducted a site visit. All food items were stored properly and at the correct temperatures. No other customers reported illness. No employees reported illness. - <u>Cappella</u>- A customer reported slipping and falling in the middle of the restaurant. Was concerned about potential spill on the ground that they may have slipped on. Reminded food manager to ensure spills are cleaned up in a timely manner. - <u>Hearth (2x)</u> – A trash bag was left outside on top of the dumpster. Diana alerted the manager and was informed the bag had been removed. It is possible that it was left by an outside party, since establishment reported that they do not use white trash bags. A customer called to report lack of glove use/changing gloves in the food prep area while they observed them changing tasks. Some areas do not require gloves but the managers and the owner were made aware of the complaint.
Housing – Complaints/Follow-ups	0 – Housing Complaints/Follow-ups
Nuisance – Complaints/Follow-ups	8/8 – Nuisance Complaints/Follow-ups conducted for: - <u>John Street (x3)</u> – A resident reported a neighboring home under construction had an overflowing dumpster. Diana spoke with the contractor each time to address the issue. One site visit was conducted after the first call but no trash was observed out of the dumpster. In other calls the contractor was called directly and reported they would call the hauler to remove the trash. Issued addressed. - <u>Dumpsters near CVS/Farmhouse/Hearth/Masala Art –UPDATE</u> – Pest elimination progress being made. A meeting was conducted with the Town Manager to review progress and to discuss the option of relocating the shared dumpster enclosure to a different location in the parking lot, and away from the daycare, which the landlord would need to be on board with. Follow up meetings with the pest control company will be happening on a weekly basis starting May 8th, along with daily trash pick-up, which will be stated in order letters which will be sent to all parties involved (pending.) - <u>Hampton Street</u> – Trash barrels reported to be open and allowing for trash/debris to blow out into neighborhood. Diana performed a site visit and saw the trash blowing out. The day of the complaint was extremely windy. Diana closed the bins and at the end of the of the site visit the bins were open again. The complainant's spouse was on site and explained the situation. Diana left a card with contact information and owner was reminded of trash containment requirements. - <u>Briarwood Circle</u> – A resident called to report excess junk in a driveway. Diana performed a site visit and saw the debris was in excess and is being covered by camouflage patterned covers. Diana will report to the Selectboard's office as the amount of debris may meet the junk bylaw. (On-going.) - <u>Needham Heights T Stop</u> –A resident reported the PlanetAid bins were overflowing. Diana conducted a site visit and observed the bins were full and other residents had left bags of clothes in front of the bin. Diana called PlanetAid and the company sent out an employee to pick up donations. - <u>#115 Wilshire Park</u> – Report from abutting resident of a spite fence containing fabric shower curtains being hung up between the properties and also reports of some unused shingles and plastic debris present on hill. Worked with Building Commissioner, who ordered owner

	to take down the spite fence. Owner complied and removed the fence and planted shrubs. Will continue to work with owner on a time frame for removing the rest of the debris.
Septic - Soil Test Application/Perc Tests conducted	1 – Soil Test/Perc Test conducted for: - #260 Cartwright Rd. – For septic system upgrade. 1 – Soil Test application received for: - #1 Wellesley Ave. – For septic system upgrade.(Soil test/Perc test scheduled.)
Septic – Construction Permits issued (Repairs)	2 – Septic Construction Repair permits issued for: - #32 Gatewood Drive – To replace D-Box - #88 Stratford Rd. – To replace D-Box
Septic – Plan Review	1 – Septic Plan Review conducted for: - #260 Cartwright Rd. (Plan Review on-going.)
Subdivision Release of Off-Street Drainage Bond request	1 – Off-Street Drainage Bond Release request received from: - Owner of #260/#267 Cartwright Rd. – Off-Street drainage bond monies held - \$3,500 per lot. Total of \$7,000 for 2-lot subdivision. (See Info. enclosed in packet.) –BOH to vote.
Tobacco Complaints	0 – Tobacco Complaints
Waste Hauler Permits Issued	10 – Waste Hauler Permits issued to: - Save that Stuff - JC Timmerman - Dalton Disposal - Orifice - Dover Trucking - Needham Recycling - Roy's Recycling - Wellesley Trucking - CERO - EOMS
Zoning Board of Appeals Plan Reviews	3 - Plan Reviews conducted for Zoning Board of Appeals: - #140 Cabot St. – Comments sent on the proposed Generator to be installed at the site. - #300 Second Ave. (Charles River Landing Apt. Complex) – Comments sent for proposed Dog Park. (Also gathered comments from Animal Control Officer and submitted them to ZBA.) - #61 Evelyn Rd. – For proposed room rental. Additional plan review conducted. Comments sent.

Yearly

Category	Jul	Aug	S	O	N	D	J	F	M	A	Ma	Ju	FY '19	FY' 18	FY' 17	FY' 16	Notes/Follow-Up
Biotech	0	0	0	0	1	0	0	0	0	0	0	0	1	0	2	2	Biotech registrations
Bodywork	0	0	0	0	0	4	2	8	0	0	0	0	14	14	6	11	Bodywork Estab. Insp.
Bodywork	0	2	0	0	0	5	2	0	0	0	0	0	9	6	4	3	Bodywork Estab. Permits
Bodywork	0	2	1	0	0	16	2	0	0	0	0	0	21	22	13	10	Bodywork Pract. Permits
Bottling	0	0	1	0	0	0	0	0	0	0	0	0	1	1	2	1	Bottling Permit insp.
Demo	12	13	9	5	11	5	12	4	7	2	0	0	80	105	112	110	Demo reviews
Domestic Animal Permits/Insp.	0	1	1	0	0	0	0	0	0	0	0	0	2	19	17	16	Animal permits/
	0	0	20	0	1	0	0	0	0	0	0	0	21	3	16		Inspections
Food Service	16	8	23	25	16	13	20	9	22	15	0	0	167	225	198	209	Routine insp.
Food Service	3	1	0	1	0	1	1	0	0	1	0	0	8	32	37	35	Pre-oper. Insp.
Retail	6	5	7	7	2	2	3	4	4	3	0	0	43	60	69	71	Routine insp.
Resid. kitchen	0	1	0	0	1	0	0	1	2	0	0	0	5	8	7	11	Routine insp.
Mobile	1	4	0	1	0	0	0	0	1	2	0	0	9	13	15	9	Routine insp.
Food Service	1	1	0	3	5	3	4	4	3	2	0	0	26	53	51	50	Re-insp.
Food Service/retail	2	1	0	0	1	129	1	0	0	1	0	0	135	171	177	176	Annual/Seasonal Permits
Food Service	7	12	19	14	12	2	3	3	3	14	0	0	89	163	158	107	Temp. food permits/Inspe
	9	1	10	0	0	0	0	0	0	1	0	0	21	29	62	54	
Food Service	1	0	1	0	0	0	0	0	1	5	0	0	8	14	7	9	Farmers Market permits
	50	45	41	42	10	0	0	0	0	0	0	0	188	127	33	16	Farmers Market insp.

Food Service	0	2	0	2	1	1	4	3	1	4	0	0	18	21	17	21	Follow-ups
Food Service	0	1	1	3	4	3	2	1	2	1	0	0	18	42	33	32	Plan Reviews
Food Service	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3	Admin. Hearings
Grease/ Septage Haulers	0	0	0	0	0	21	0	0	0	0	0	0	21	24	24	29	Grease/ Septage Hauler Permits
Housing (Chap II Housing)	0	0	0	0	0	0	0	0	0	0	0	0	0	14	14	7	Annual routine insp./
	0	0	0	0	0	0	0	0	0	0	0	0	0	5	4	4	Follow-up insp.
Housing	2	4	1	3	4	1	3	0	2	0	0	0	20	22	7	18	New Compl./
	3	5	1	4	4	1	3	3	2	0	0	0	26	24	11	37	Follow-ups
Hotel	0	0	0	0	0	3	0	0	0	0	0	0	3	3	3	3	Annual insp./
	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	Follow-ups
Nuisance	2	5	5	4	4	4	1	4	6	8	0	0	43	42	30	44	New Compl./
	2	5	5	4	4	4	1	4	8	8	0	0	45	42	45	50	Follow-ups
Pools	1	4	0	0	1	7	0	0	0	0	0	0	13	12	13	9	Pool insp./
	1	5	0	0	0	1	1	0	0	0	0	0	8	7	8	3	Follow up
Pools	1	2	1	0	0	7	1	0	0	0	0	0	12	12	9	9	Pool permits
Pools	2	1	0	0	0	0	0	0	0	0	0	0	3	44	19	8	Pool plan reviews
Pools	0	0	0	0	0	4	0	0	0	0	0	0	4	7	6	4	Pool variances
Septic	0	0	0	1	2	1	1	1	0	1	0	0	7	5	18	8	Septic Abandon
Septic	1	0	0	0	0	1	0	0	0	0	0	0	2	2	5	9	Addition to a home on a septic plan rev/approval
Septic	0	0	0	8	9	3	1	0	0	0	0	0	21	28	43	23	Install. Insp.
Septic	0	0	0	0	1	0	0	0	0	0	0	0	1	1	0	3	COC for repairs
Septic	0	0	0	0	2	1	1	0	0	0	0	0	4	4	3	3	COC for complete septic system
Septic	6	4	3	5	7	6	5	4	6	5	0	0	51	51	62	61	Info. requests

Septic	0	0	0	0	0	0	0	0	0	1	0	0	1	2	6	8	Soil/Perc Test.
Septic	0	1	0	1	2	0	0	0	0	2	0	0	6	5	8	6	Const. permits
Septic	0	0	1	0	1	3	2	0	0	0	0	0	7	9	11	9	Installer permits
Septic	0	0	1	0	1	1	1	0	0	0	0	0	4	3	6	6	Installer Tests
Septic	0	0	0	0	1	0	0	0	0	0	0	0	1	3	7	3	Deed Restrict.
Septic	1	1	0	1	2	1	0	0	0	1	0	0	7	23	14	14	Plan reviews
Sharps permits/Insp.	0	0	0	0	0	7	0	0	0	0	0	0	7	9	9	10	Disposal of Sharps permits/
	0	0	0	0	2	5	0	0	0	0	0	0	7	7			Inspections
Subdivision	0	0	0	0	0	0	0	0	0	1	0	0	1	0	3	3	Plan review- Insp. of lots /
	0	0	0	0	0	0	0	0	0	0	0	0	0		1	0	Bond Releases
Special Permit/ Zoning memos	1	2	0	2	4	2	7	6	0	3	0	0	27	15	12	16	Special Permit/Zoning
Tobacco	0	0	0	0	0	10	0	0	0	0	0	0	10	11	12	13	Tobacco permits
Tobacco	4	1	3	2	0	0	1	1	2	0	0	0	14	18	25	25	Routine insp./
	1	0	0	0	0	0	0	0	2	0	0	0	3	3	6	7	Follow-up insp.
Tobacco	0	0	0	10	0	0	0	10	0	10	0	0	30	41	34	48	Compliance checks
Tobacco	0	0	0	0	0	0	0	2	1	0	0	0	3	4	2	4	New compl./
	0	0	0	0	0	0	0	2	1	0	0	0	3	4	2	4	Compl. follow-
Trash Haulers	0	0	0	0	0	0	0	0	3	10	0	0	13	14	26	30	Trash Hauler permits
Medical Waste Haulers	0	0	0	0	0	2	0	0	0	0	0	0	2	1	2	2	Medical Waste Hauler permits
Wells	0	2	0	0	0	0	2	0	1	0	0	0	5	2	7	6	Permission to drill letters/
	0	0	0	0	0	0	0	1	0	0	0	0	1	0	3	0	Well Permits

FY 19 Priority FBI Risk Violations Chart (By Date)

Restaurant	Insp. Date	Priority Violation	Description
Comella's	7/16/2018	28 - 7-206.13 (A) Tracking Powders, Pest Control & Monitoring - A tracking powder pesticide may not be used in a food establishment.	Kitchen -Eliminate mouse infestation
Cookies By Design	9/21/2018	9-3-301.11 (B) Preventing Contamination from Hands - Except when washing fruits and vegetables, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equip.	Kitchen -Need gloves.
Pollard Middle School	9/24/2018	28-7-204.11 Sanitizers - Chemical sanitizers, including chemical sanitizing solutions generated onsite, and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940. Chemical sanitizers shall not exceed manufacture's label instructions.	Kitchen -Sanitizer in 3 bay sink was low, ~100 ppm - should be 150-200 ppm.
St. Sebastian's	9/27/2018	33-3-501.15 (A) Cooling Methods - Cooling shall be accomplished in accordance with the time and temperature criteria specified under 3-501-14 by using one or more of the following: placing food in shallow pans; separating the food into smaller or thinner portions; using rapid cooling equipment; stirring the food in a container placed in an ice water bath; using containers that facilitate heat transfer; adding ice or other effective methods	Kitchen -Tortellini was at 68 F - Should be cold held in walk-in before being placed in the salad bar.
Gari	10/3/2018	4-501.110 Warewasher Wash Sol. Temp. - Ensure that low temp dishwash machine operates at a minimum of 120°F wash & rinse. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 120°F.	Kitchen -110°F in wash cycle
Wingate at Needham	11/6/2018	5-402.13 Conveying Sewage - Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.	Kitchen - Repair hand wash sink drain in dish room
Beth Israel Deac. Hospital Kitchen	12/15/2018	4-703.11 Methods-Hot Water and Chemical - After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in: hot water manual operations for at least 30 seconds; hot water mechanical achieving surface temperature of 160°F as measured by an irreversible registering temperature indicator; or chemical (manual or mechanical) for times specified the EPA-registered label use instructions.	Kitchen - Wash Temperature 140-140F.
Residences at Wingate	12/15/2018	4-602.11 (A) Food-Contact Surfaces and Utensils - Equipment food-contact surfaces and utensils shall be cleaned: before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; each time there is a change from working with raw foods to working with RTE foods; between uses with raw fruits and vegetables and with TCS food; before using or storing a food temperature measuring device; and any time during the operation when contamination may have occurred.	Kitchen - Slicing machine blade has encrusted food debris on rim of blade. Thorough cleaning and sanitizing required.

Sweet Tomatoes	12/20/2018	3-501.14 (A) Cooling Cooked Foods - Cooling cooked TCS foods shall be done within 2 hours from 135°F to 70°F and then within 4 hours from 70°F to 41°F.	Kitchen - A hot holding unit was found unplugged in the back of the kitchen on the shelf which contained tomato sauce and another pan of meatballs. PIC stated she was told to unplug it at 4 o'clock the meatballs and sauce were in the danger zone products discarded tomato sauce was 106°F and meatballs were 110°F.
Briarwood Healthcare Center	1/6/2019	7-201.11 Storage Separation - Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single use articles.	Kitchen - Oven cleaner and other toxic chemicals stored above prep sink and prep table area. Store segregated and away from all food, equipment prep areas.
Mandarin Cuisine	1/19/2019	3-302.11 (A)(2) Raw Animal Foods Separated from each other - Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork and poultry during storage, preparation, holding, and display by: (a) Using separate equipment for each type, or (b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented and (c) preparing each type of food at different times or in separate areas. 3-501.14 (A) Cooling Cooked Foods - Cooling cooked TCS foods shall be done within 2 hours from 135°F to 70°F and then within 4 hours from 70°F to 41°F.	Kitchen - Raw chicken stored above RTE foods. This chicken was wrapped in a chef's coat. Removed. Specific discussion w/ PIC on storage segregating product so it is more functional for him. Kitchen - Large bulk pans cooked rice cooling improperly Rice was 129°F, 110°F.
Spiga	1/19/2019	3-501.16 (A)(2) (B) Proper Cold Holding Temps. - All cold TCS foods shall be held at 41°F or below. Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F or less.	- Kitchen - Bechamel 54 °F; Fresh fish filets 41 °F; Porcini mushrooms mix 52 °F; Suggest pre-chilling pans in freezer to help in keeping food 41 F or below. Provide a lid or cover for this unit, and the other refrigerator roll top (without the top) in the far corner -COS. Several coddled raw whole shell eggs were observed in a small pan insert in warm water. (This was used for making Carbonara sauce.) The inside is not fully cooked and in the danger zone. Suggest using pasteurized shell eggs.
Masala Art Restaurant	1/19/2019	3-304.11 Food Contact with Soiled Items 3-302.11 (A)(3) Using clean and sanitized equipment - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer.	Kitchen -Utensils stored improperly after cleaning and sanitizing above 3-Comp sink.
Tomorrow's Lunch @ WCVB	1/29/2019	3-501.16 (A)(2) (B) Proper Cold Holding Temps. - All cold TCS foods shall be held at 41°F or below. Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F or less. 3-501.16 (A)(2) (B) Proper Cold Holding Temps. - All cold TCS foods shall be held at 41°F or below. Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F or less.	Cafeteria - Fridge is at 46°F. Service is to be done today. Forward receipt of service to Health Div. ASAP. End of service. Kitchen - Chickpeas and tuna temps were high. PIC voluntarily discarded.
The James	2/9/2019	3-301.11 (B) Preventing Contamination from Hands - Except when washing fruits and vegetables, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-	Kitchen - Bare hand contact w/ ready to eat food. Product discarded. Train and review with staff.

		use gloves or dispensing equipment.	
Otrada Adult Day Care	2/16/2019	3-801.11 (C) Special Requirements (Raw/Partially Cooked RTE) - - The following foods may not be served or offered for sale in a RTE form: raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare, a partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and raw seed sprouts. 7-204.11 Sanitizers - Chemical sanitizers, including chemical sanitizing solutions generated onsite, and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940. Chemical sanitizers shall not exceed manufacture's label instructions.	Kitchen - Cook stated that they provide omelet, sunny side undercooked eggs to adult day care participants. Cease and desist this practice, unless pasteurized shell eggs or pasteurized liquid eggs are used. Kitchen - Kitchen chlorine sanitizer in 3 comp sink was in excess of 200 ppm. Discussed w/ chef DeMaris and PIC.
Farmhouse Restaurant	2/16/2019	3-304.11 Food Contact with Soiled Items - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer. 3-501.14 (A) Cooling Cooked Foods - Cooling cooked TCS foods shall be done within 2 hours from 135°F to 70°F and then within 4 hours from 70°F to 41°F.	Kitchen - Micro greens, towel and other products covered w/ paper towels direct food contact. Discussion with Juan PIC Kitchen - Bolognese Sauce 176°F in walk in cooler. COS. Discussion w/ PIC on alternative methods to cool rapidly sautéed mushrooms on service line- cool quickly, keep below rim of food to assist in keeping well chilled.
7-Eleven 36044A (Chestnut Street)	2/21/2019	3-701.11 Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food - A food that is unsafe, adulterated, or not honestly presented as specified shall be discarded or reconditioned. Food that is not from an approved source shall be discarded. RTE food that may have been contaminated by an employee who has been restricted or excluded shall be discarded. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.	Store - Box of Cinnamon Toast Crunch was ripped into. Discarded by PIC.
Volante Farms	2/22/2019	3-501.16 (A)(2) (B) Proper Cold Holding Temps. - All cold TCS foods shall be held at 41°F or below. Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of 45°F or less. 3-501.15 (A) Cooling Methods - - Cooling shall be accomplished in accordance with the time and temperature criteria specified under 3-501-14 by using	Store - "From Our Kitchen" reach-in unit was observed at 46° F. May be on defrost. Basement - Employees were not able to report definite time when soups were added into fridge. In ice bath but still above 41°F. Recommend cooling and keeping a log.

		one or more of the following: placing food in shallow pans; separating the food into smaller or thinner portions; using rapid cooling equipment; stirring the food in a container placed in an ice water bath; using containers that facilitate heat transfer; adding ice or other effective methods.	
New Garden	3/2/2019	3-304.11 Food Contact with Soiled Items - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer. 3-302.11 (A)(2) Raw Animal Foods Separated from each other - Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork and poultry during storage, preparation, holding, and display by: (a) Using separate equipment for each type, or (b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented and (c) preparing each type of food at different times or in separate areas.	Kitchen - Raw TCS foods fish stored layered with paper towel. Paper towel is not food grade. Use approved food grade storage only. Kitchen - TCS foods stored improperly in walk in Cooler. Raw chicken stored above raw pork and large buckets of cabbage/ vegetables were on lower shelf. Smaller prepared TCS animal foods were all stored on the same shelf in the walk-in without segregation. Store all TCS foods separated and segregated to prevent cross contamination-Provide proper and organized food storage plan within 3 days or less.
Sudbury Farms	3/15/2019	3-202.11 (A)(C)(D) Temperature - TCS food shall be at a temperature of 41°F or below when received. Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 45°F or less. TCS food that is cooked to a proper temperature and received hot shall be at a temperature of 135°F or above. 4-703.11 Methods-Hot Water and Chemical- After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in: hot water manual operations for at least 30 seconds; hot water mechanical achieving surface temperature of 160°F as measured by an irreversible registering temperature indicator; or chemical (manual or mechanical) for times specified the EPA-registered label use instructions.	Kitchen - Two lobster tails on table at room temp 60F. Product discarded Kitchen - The 3 comp sinks in the meat room and prep area in the basement were not set up properly. The middle rinse sink was used as a wash/ soap sink without a clear clean water rinse prior to sanitizing. Sinks were not labeled properly - Wash/ rinse/ sanitize. Provide additional training and proper signage.
Acapulcos	3/23/2019	3-501.14 (A) Cooling Cooked Foods - Cooling cooked TCS foods shall be done within 2 hours from 135°F to 70°F and then within 4 hours from 70°F to 41°F.	Kitchen - Bulk Sauces cooling improperly on counter. Cool properly. Enchilada sauce was 185F+ PIC stated they were made 1.5 hours ago.
Cookies by Design	3/27/2019	3-301.11 (B) Preventing Contamination from Hands - Except when washing fruits and vegetables, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.	Kitchen - No gloves on site. Employees observed working with cookies without any gloves. Hand washing was noted.
Fuji Steakhouse	4/6/2019	3-304.11 Food Contact with Soiled Items - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth	Walk in freezer- Frozen salmon stored inside a previously used raw chicken box. These are considered single use only and should not be used for food storage. Provide proper storage food grade containers only –

		napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer. 3-304.11 Food Contact with Soiled Items - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer. 3-302.11 (A)(2) Raw Animal Foods Separated from each other - Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork and poultry during storage, preparation, holding, and display by: (a) Using separate equipment for each type, or (b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented and (c) preparing each type of food at different times or in separate areas.	Kitchen - Side towels are used to cover food products and as absorbable cloths for eggrolls. Use food grade materials only. Discussed w PIC recommendations. Kitchen - Raw cutlets of Pork, salmon, pork and chicken were all stored in the same container on service line. Store all TCS foods separated and segregated to prevent cross contamination
Gyro and Kebab House	4/8/2019	3-302.11 (A)(1) Raw Animal Foods Separated from RTE - Food shall be protected from cross-contamination by: (1) Separating raw animal foods during storage preparation, holding and display from: (a) Raw RTE food including other raw animal food such as fish for sushi or molluscan shellfish or other raw RTE food such as fruits and vegetables, and (b) cooked RTE food. 7-201.11 Storage Separation - - Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single service and single use articles.	Kitchen - Pr Raw meat stored above hummus. Corrected on site - Basement - Paint and varnish seen next to catering pans. Chemical cleaners stored near food and food equipment. All food must be stored together away from all chemicals. Chemicals should be put on designated shelf.
Gari Restaurant	4/15/2019	3-304.11 Food Contact with Soiled Items - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer. 3-304.11 Food Contact with Soiled Items - Food shall only contact surfaces of: equipment and utensils that are cleaned and sanitized; single-service and single-use articles; or linens, such as cloth napkins that are used to line a container for the service of foods AND are replaced each time the container is refilled for a new consumer.	Kitchen - Raw pork was stored with raw chicken in walk in cooler. The raw chicken was exposed. Product discarded. Store TCS food separated and segregated. Train staff on proper food storage Kitchen - Paper towels used for hand drying were used to wrap Raw sushi fish, and other food items. Wrap and store with food grade products only such as pvc film, foil, food grade tissue and similar. Discussion with PIC

Olin College	4/18/2019	4-602.11 (A) Food-Contact Surfaces and Utensils 4-602.11 (E)(1-3) Food-Contact Surfaces and Utensils - Equipment food-contact surfaces and utensils shall be cleaned: before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; each time there is a change from working with raw foods to working with RTE foods; between uses with raw fruits and vegetables and with TCS food; before using or storing a food temperature measuring device; and any time during the operation when contamination may have occurred.	1st Floor Kitchen - Ice machine to clean out.
Avita of Needham	4/20/2019	2-301.11 Clean Condition - Food employees shall keep their hands and exposed portions of their arms clean.	Kitchen - Cook observed with uncovered/unprotected burn/ cut on lower forearms. Gloves did not cover. Protect this area.
Baker's Best	4/27/2019	3-302.11 (A)(2) Raw Animal Foods Separated from each other Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork and poultry during storage, preparation, holding, and display by: (a) Using separate equipment for each type, or (b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented and (c) preparing each type of food at different times or in separate areas.	Kitchen - Raw chicken breasts in walk-in were stored above cooked chicken breasts, and above rare beef cubes on sheet pans. COS



NEEDHAM PUBLIC HEALTH DIVISION



Date: April 2019

Staff: Rachael Cain (Greenberg)

Activities and Accomplishments

Safety at Home Program

Activity	Notes
Presentations and Promotion	- Flyers mailed with all Needham water bills (ongoing for three months to reach entire town) - Met with Jog Your Memory 5K to promote program and cross-referrals - Held lunch and learn on fall prevention in partnership with Aging Services, the Alzheimer's Association, and local physical therapists - Included fall screening conducted by physical therapists Over 20 older adults attended
Program roll-out	- Full program roll-out continued Five pilot and 19 full program visits completed to date 18 referrals received due to flyers with water bills - Data from visits is being collected and recorded
Quality Improvement	Continued improvement on program protocol and forms based on feedback from Safety at Home team members
Evaluation	Continued development of an evaluation plan
Team Meetings	Regular team meetings continued
Sustainability	- Developing plan to offer Matter of Balance sessions year-round to program participants (and Needham residents overall), in collaboration with Aging Services - Public Health Nurse attended Matter of Balance Master training in April - Working with local physical therapists to offer fall screenings at CATH regularly

Housing Authority Assessment

Activity	Notes
Survey Dissemination	Total of 119 surveys completed (38% response rate), which is sufficient for analysis - Surveys sent to consultant for analysis – expected in coming weeks - Quantitative and qualitative analyses to occur in coming months, culminating in final report



NEEDHAM PUBLIC HEALTH DIVISION



Accreditation Support

Activity	Notes
Community Health Assessment	- Reviewed and adjusted notes for focus groups and community forum - Helped disseminate BID-Needham resident survey

Climate Change Project

Awarded \$26,089 grant from the Metropolitan Area Planning Council to implement a one-year climate resiliency project for older adults. Activities will include creating and holding three workshops for older adults about extreme weather and how to prepare for it, as well as a related communications campaign.

Activity	Notes
Start-Up Activities	- Reached out to program partners - Met with internal team and MAPC to plan next steps - Began brochure development - Completing the hiring process to bring on a Program Coordinator to assist with this project

NACCHO Million Hearts project

- Awarded \$9,912 grant from the National Association of County and City Health Officials to implement a five month Million Hearts project focused on tobacco cessation. Activities will include a communications campaign and tobacco cessation course.

Activity	Notes
Start-Up Activities	- Conducted outreach to program partners - Worked with graphic design to create an infographic and program flyer - Both were translated into Mandarin and Russian - Finalized program logistics - Promoted course: - Segment on The Needham Channel - Flyers and infographics distributed to 117 local sites - Posted on Town TV screens and website - Postings on Facebook and Twitter - Press releases to local newspapers - Emails to community partners, including BID-Needham, the Community Council, schools, and the Housing Authority, among others

Other Public Health Division activities this month:

- Attended day-long "Ounce of Prevention" conferenced, hosted by the MA Department of Public Health



NEEDHAM PUBLIC HEALTH DIVISION



Accreditation Update April 2019

May 1, 2019
Lynn Schoeff

Activity	Notes
Policies and procedures	- Public education tracking - Purchase order request - Board of Health orientation - New staff orientation - Asbestos - Database for tracking prevention work Continuing work: - Transportation policy (Aging Services) - Lyft Ridesharing Program (Aging Services) - Volunteer Management (Aging Services)
Accreditation	The orientation packet for new Board of Health members was completed and distributed to BOH members at the April meeting.

Other work:

- Lynn is developing a grant-writing workshop for Health and Human Services staff members.
- Lynn is beginning the planning process for next year's annual report.

Public Health Nurse Report - April FY2019

Donna Carmichael and Tiffany Zike

COMMUNICABLE DISEASES:	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	Apr	MAY	JUN	T19	T18	T17
BABESIOSIS		3											3	4	2
Borrelia Miyamota													0	0	0
CAMPYLOBACTER				2	1	1	1		1				6	14	7
CRYPTOSPORIDIUM													0	1	0
Cyclosporiasis													0	1	0
Dengue													0	0	1
E-Coli													0	0	0
EHRlichiosis/ HGA	1	1											2	2	2
Enterovirus													0	1	1
GIARDIASIS									1				1	1	2
Haemophilus Influenza													0	1	1
HEPATITIS B		1		1		2	2	1					7	8	8
HEPATITIS C	1		3	2		3				1			10	14	21
Influenza						9	19	30	20	16			94	211	108
Legionellosis													0	2	0
Listeriosis													0	0	0
LYME	13	7	2	4	4	2	1	2		3			38	53	44
MEASLES													0	0	0
MENINGITIS													0	0	0
Meningitis(Aseptic)													0	1	2
Mumps													0	0	0
Noro Virus							1	1	3				5	3	2
PERTUSSIS	3												3	1	4
RMSF(Rocky Mt Spotted Fever)						1									
SALMONELLA			1										1	3	2
SHIGA TOXIN									1				1	0	1
SHIGELLOSIS		1		1									2	0	0
STREP Group B													0	1	0
STREP (GAS)										2			2	5	0
STREP PNEUMONIAE				1			1			1			3	3	0
TUBERCULOSIS													0	0	0
TULAREMIA													0	0	1
Latent TB	1												1	0	1
Varicella	2	1	1		1				1				6	12	10
Vibrio			1										1	0	1
West Nile virus													0	0	0
Zika													0	1	1
TOTAL DISEASES	21	14	8	11	6	18	25	34	27	23	0	0	186	343	221
Revoked/Suspect Diseases Investigated			1	3			1						5	6	13
Contact Investigation	4						1						5	5	1

Public Health Nurse Report - April FY2019

Donna Carmichael and Tiffany Zike

ANIMAL TO HUMAN BITES	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	Apr	MAY	JUN	T19	T18	T17
DOG	6	3	4	0	2	1	2		2	3			23	42	15
CAT													0	0	0
BAT													0	8	5
SKUNK										1			1	0	0
RACCOON													0	0	0
other													0	1	1
TOTAL BITES	6	3	4	0	2	1	2	0	2	4	0	0	24	51	22

IMMUNIZATIONS	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	FY19	FY18	FY17
B12	2	2	2	2	2	2	2	2	2	2			20	24	22
Flu (Seasonal)			284	408	20	0	0	0	0	0			712	522	674
Hep B						2	0	0	0	0			2		
Polio		4		0	0	0	0	0	0	0			4		
TDap		3		1	0	2	0	0	0	0			6	0	1
Varicella				0	0	0	0	0	0	0			0	2	0
Consult	49	50	90	72	32	98	34	25	71	65			586	319	592
Fire/Police	20	7	15	15	16	20	6	5	22	15			141	59	80
Schools	2	8	30	40	4	35	10	8	14	12			163	42	106
Town Agencies	25	20	20	15	10	35	15	10	30	25			205	185	246
Community Agencies	2	15	25	2	2	8	3	2	5	10			74	32	160

ASSISTANCE PROGRAMS	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	FY19	FY18	FY17
Food Pantry		1	2	0		3	0	1	1	1	1		10	13	20
Food Stamps			0	0		0	0	1	0	0	0		1	0	4
Friends			0	0		0	0	0	0	0	0		0	0	0
Gift of Warmth	1		2	2		1	1	4	1	2	6		20 (\$5817)	20(\$7250)	11
Good Neighbor			0	0		0	0	0	2	0	0		2 ⁵ \$425/fam		8
Park & Rec			0	0		0	0	0	0	1	0		1	1	2
Salvation Army			0	0		1	0	0	0	0	0		1	0	0
Self Help	2	2	1	3		0	2	1	3	4	5		23	34	46

Gift Cards Distributed - 2

Public Health Nurse Report - April FY2019

Donna Carmichael and Tiffany Zike

WELLNESS PROGRAMS	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	FY19	FY18	FY17
Office Visits	56	49	34	26	11	18	20	27	29	30			300	467	481
Safe Visits	0	3	2	1	2	0	0	1	2	0			11	10	7
Clinics	0	0	0	0	4	2	7	7	11	7			38	0	0
Housing Visit	1	1	0	0	2	0	0	1	0	0			5	15	6
Housing Call	0	3	3	4	7	4	13	5	4	1			44	110	37
Camps-summer	6	7	0	0	0	0	0	8	1	8			30	60	50
Tanning Insp	0	0	0	0	0	0	0	0	0	0			0	0	0
Articles	1	0	1	0	0	0	1	0	1	2			6	3	3
Presentations	1	1	6	2	5	2	2	1	1	1			22	16	0
Cable	0	1	1	1	0	0	1	0	0	1			5	2	5

EMPLOYEE WELLNESS	July	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	FY19	FY18	FY17
BP/WELLNESS - DPW/RTS	0	0	10	13	11	11	13	12	12	12	12		94	148	169
CPR/AED INSTRUCTION	0	0	0	0	11	7	0	0	0	0	0		18	0	31
Police Weights	0	0	0	0	13	0	0	0	0	0	0		13		
First Aide	10	8	5	6	3	2	0	3	6	9			52		
Total People	10	8	15	19	38	20	13	15	18	21	0	0	177		
Community Education Hours															
HEALTH ED Tick Borne	50	20	15	5	3	0	0	0	0	1			94	132	90
HEALTH ED Mosquito Borne	50	20	15	5	0	0	0	0	0	0			90	135	80
HEALTH ED FLU	0	0	15	15	10	20	2	2	1	3			68	289	160
GENERAL HEALTH EDUCATION	20	10	10	10	15	20	5	12	8	3			113	186	258
HEALTH ED Measles										15			15		
Total Hours	120	50	55	35	28	40	7	14	9	22	0	0	380	1077	954

Public Health Nurse Report - April FY2019

Donna Carmichael and Tiffany Zike

MEETINGS, EVENTS, TRAININGS

<i>Title</i>	<i>Description/Highlights/Votes/Etc.</i>
Emergency Planning	NC8 - Monthly Meeting
	Region 4AB - PHEP Monthly Meeting
	EOC Functional Exercise April 1st
	Closed EDS meeting with Babson and Olin College
Emergency Preparedness	Grant writing - EMPG, MVP, and HMEP Grants
DVAC	Monthly Meeting - Organizing and Preparing for meeting, meeting minutes, follow up and distribution of information
	REACH Donation Drive
	Cable series coordination
Concussions	Working towards Roll-out
	Baseball/Softball Opening Day
	Working on Paperwork/Website
Healthy Aging	Home visit x 1
	Lunch and Learn
Trainings	MHOA Camps
	Immunization Updates
	Matter of Balance (April 10-12) in Grand Rapids, MI
Summer Camps	Managing Packet information
Managing	Managing BC Student, DVAC Intern as well as EP Program Coordinator
Newton-Wellesley	Community Meeting



Needham Public Health Department

1471 Highland Avenue, Needham, MA 02492
www.needhamma.gov/health

781-455-7500 ext. 511
781-455-0892 (fax)



Memo

To: Lee Newman, Planning Department
From: Tara Gurge, Public Health Department 
Date: 4/24/2017
Re: Definitive Subdivision Plans for #260 and 267 Cartwright Rd.
Map No. 218, Parcel 1

This Memo is in reference to the proposed subdivision of land to be located at #260 and #267 Cartwright Road in Needham. The plans were dated January 23, 2017, and stamped by Joyce E. Hastings, Registered Professional Land Surveyor and Joseph M. Nihill, Registered Professional Engineer. According to this plan, this proposed subdivision would create two (2) individual house lots. The house located at #267 Cartwright Rd. is set to be demolished, along with the abandonment of the existing cesspool. A new septic system is proposed on site to accommodate this new home (given that municipal sewer is not available). The proposed Lot 1 will include the existing house, #260 Cartwright Rd., and existing septic system, and contains 5.47 Acres. The proposed Lot 2 will include the newly constructed house, #267 Cartwright Rd., and contains 4.69 Acres.

The new home's electrical service will be provided by the Wellesley Municipal Light Department, and the new home's municipal water service will be provided by the Wellesley Department of Public Works Water and Sewer Division.

We have no concerns at this time with the proposed subdivision plans. In reference to our comments regarding the proposed septic system for the new home at #267 Cartwright Rd. - A proposed septic plan, dated March 23, 2017, has been submitted for our review. We are still in the plan review process, and will be issuing a conditional approval, due to the fact that we have not yet received a set of proposed building plans for the new house to be built (NOTE: We must receive a full set of proposed building plans, once available, for our review/approval.) Since this existing home located at #267 Cartwright Rd. is proposed to be demolished and existing septic system abandoned, a Public Health Department 'Notification of Demolition' form will need to be submitted back to us for review and approval, prior to the issuance of the demolition permit by the Building Department.

The following off-street drainage requirements for this proposed subdivision are indicated:

- 1) Lots should be graded to the limits of construction as to have no standing water or otherwise create a public health nuisance.
- 2) Grading shall not improperly shed or illegally increase drainage onto adjacent properties.
- 3) All subsequent developers or builders should be notified of the off street drainage requirements.
- 4) If there are difficult or unusual conditions as determined in the field from the approved grading plan, or other circumstances or objections received from abutters, the Board of Health may require an as built plan.
- 5) Following the Board of Health off-street drainage guidelines, a drainage surety of \$3,500 should be set for each lot, or \$7,000.00 for the two-lot subdivision.

Please feel free to contact the Public Health Department office if you have any additional questions on what was stated in this Memo.

cc: Timothy McDonald, Public Health Director

Mary Stare Wilkinson
Bradford Wilkinson
267 Cartwright Road
Needham, MA 02492
Mailing Address:
267 Cartwright Road
Wellesley, MA 0248

April 19, 2019

tgurge@needhamma.gov
Tara E. Gurge
Assistant Public Health Director
Needham Public Health Division
178 Rosemary Street
Needham, MA 02494

Re: 260 and 267 Cartwright Road

Dear Ms. Gurge:

We are writing to you at the suggestion of our attorney, Roy Cramer, who has spoken with you requesting the release of the \$7,000 off-street drainage bond presently held by the Town of Needham.

The background of this case is the following:

The property has been owned by the Stare family for approximately 70 years. The property originally was comprised of 50 acres and contained two single family residences. Mary Stare Wilkinson grew up in the house at 267 Cartwright Road and the second house on the property at 260 Cartwright Road has been rented for many years. In 1989 Mary Stare Wilkinson's parents sold 38 of the 50 acres to the Town of Needham for conservation purposes and retained 12 acres. Both residences are located on the 12 acre parcel.

On May 10, 2017, the Needham Planning Board issued a Definitive Subdivision Decision for 260 and 267 Cartwright Road. We proposed to demolish our residence at 267 Cartwright Road and construct a new single-family residence to replace the old one. We recently retired and moved from Connecticut to 267 Cartwright Road to live full time. We thought it best to create two separate lots so that each residence could be located on its own lot. Construction was completed on the new residence last year. The old residence was demolished and all work related to the subdivision has been completed. We originally posted a \$93,000 bond with the Planning Board. Of those funds, \$86,000 was held to secure completion of the subdivision road, and \$7,000 was held as the off-site drainage bond (\$3,500 per lot). Since all of the work has been completed, the Planning Board released the \$86,000 portion of the bond to us earlier in the year. What we request now is the return of the remaining \$7,000.

Page 2
Tara Gurge
Assistant Public Health Director
April 19, 2019

The second residence (260 Cartwright Road) has been a rental property for many years. We recently re-rented the residence to a new tenant we are very happy with and hope that he stays as our tenant for a long time. We have no plans to sell the existing residence at 260 Cartwright Road to a new owner. Unlike a normal subdivision, in which a developer subdivides the property, builds homes for future homeowners and then sells lots to new homeowners, we own the entire 12-acre parcel and both residences. The general practice of holding the off-street drainage bond for one year after new owners move into the new house is not applicable to our situation; we are the only owners. Reconstruction of the residence at 260 Cartwright Road was not part of the subdivision, both of us own the entire property, including the residences. The number of residences on the property remained the same.

Since all of the work associated with the subdivision is completed, we request that you release the off-street drainage bond now instead of the usual one-year period after new owners purchase a newly constructed house.

Thank you for your consideration.

Very truly yours,



Mary Stare Wilkinson



Bradford Wilkinson

Compliance and Enforcement

- 1. PURPOSE**
- 2. EXPLANATION**
- 3. PRINCIPLE**
- 4. RECOMMENDATION**
- 5. PARTS**
 - 8-6 CONSTITUTIONAL PROTECTION**
 - 8-7 AUTHORITY**
 - 8-8 NOTICES**
 - 8-9 REMEDIES**

1. PURPOSE

The purpose of this Annex is to set forth provisions, in codified form, that provide a full array of enforcement mechanisms while recognizing the diverse statutes and regulations that currently govern the operations of the thousands of State and local regulatory agencies.

2. EXPLANATION

State or local statutes, regulations, and ordinances vary in their design, specificity, and degree of comprehensiveness in that they may:

- (A) Contain authorities that provide the basis for certain post-inspection compliance strategies but remain silent with respect to other enforcement mechanisms;
- (B) Include specific requirements that are different from those provided in this Annex; and
- (C) Be structured so that provisions such as administrative procedures are embodied in sections of the law that transcend and are separate from those governing food establishments.

Consequently, in this document a deliberate attempt is made to extract those provisions that could conceptually be adopted as an extension of Chapter 8 if they were compatible with existing, governing State and local statutes. The extracted provisions are numbered to sequentially follow Chapter 8 but are placed in this Annex so that regulatory agencies can revise them to be consistent with their statutes and their needs as discussed in the Recommendation, below.

It is anticipated that adoption of this Code will be facilitated by the fact that:

- (A) The compliance provisions of Chapter 8 that should be an integral part of State or local food regulations are part of the text of the Code; and
- (B) The administrative and judicial enforcement provisions that are critical to the framework of a food regulatory program, but that may be repetitive or discrepant when compared to State or local statutes, are separated in this Annex.

3. PRINCIPLE

Although the situations necessitating escalated enforcement actions comprise a small percentage of those encountered by the regulator, a full spectrum of enforcement tools must be available where immediate hazards exist, or where compliance is not obtained voluntarily. Thus, a jurisdiction must have in place both the necessary statutory framework that includes a broad-based, well-defined enforcement component and regulations that specify the requirements within those legal authorities. It is imperative that there be clearly stated and legally sound rules that include the criteria for compliance and enforcement, the responsibilities of all parties, sanctions for noncompliance, and due process guarantees.

4. RECOMMENDATION

FDA recommends that agencies assess their statutory provisions that pertain to food establishments in light of this Annex and consider proposing changes to their statutes and regulations where they determine that provisions contained within this Annex will strengthen their programs. Such an assessment may involve reviewing problems encountered in attempts to prosecute under existing State or local provisions; considering comments received by the regulatory authority about its enforcement process; consulting with staff and legal counsel to identify gaps or weaknesses in the provisions; comparing provisions with sister agencies for comprehensiveness, equity, and uniformity; and seeking input from outside sources that have experience in taking, or being the subject of, enforcement actions.

Appropriate wording and cross referencing changes to the provisions in this Annex may be necessary, based on whether they are adopted as statutes or regulations. Modifications to the adoption forms (Forms #2-A and #2-B in Annex 7) may also be necessary based on that decision.

Parts

- 8-6 CONSTITUTIONAL PROTECTION
- 8-7 AUTHORITY
- 8-8 NOTICES
- 8-9 REMEDIES

8-6	CONSTITUTIONAL PROTECTION	
	<i>Subparts</i>	
	8-601	Procedural Safeguards
	8-602	Judicial Review

Procedural Safeguards

8-601.10 Preservation of Rights.

The REGULATORY AUTHORITY shall justly apply the remedies according to LAW and this Code, to preserve the rights to equal protection and due process of a PERSON to whom the remedies are applied.

Judicial Review

8-602.10 Rights of Recipients of Orders or Decisions.

A recipient of a REGULATORY AUTHORITY order or decision may file a petition for judicial review in a court of competent jurisdiction after available administrative appeal remedies are exhausted.

8-7 AUTHORITY

Subpart

8-701 Legal Authority

***Legal Authority* 8-701.10 Adoption of Regulations.**

The REGULATORY AUTHORITY shall have the requisite legal authority from the appropriate statute/ordinance making authority to adopt and enforce regulations to carry out the administrative and judicial enforcement provisions of the Code that are critical to the framework of a Food Establishment regulatory program, to include the requirement for the issuance of a Permit.

8-701.11 Implementation of Regulations.

Appropriate modifications to the adoption forms (Form #2-A (Adoption by Reference short form) and #2-B (Adoption by Section-by-Section Reference)) in Annex 7, where used, shall be made consistent with said legal authority to enact regulations and enforce compliance of the Code, whether they are adopted as statutes or regulations.

8-701.20 Basis for Action.

The REGULATORY AUTHORITY shall clearly state and reference within the Code the legally sound basis for compliance and enforcement action, the responsibilities of the parties, sanctions for noncompliance and due process.

8-8 NOTICES

Subpart

8-801 Service of Notice

Service of Notice **8-801.10 Proper Methods.**

(Note: Adoption of this section provides the basis for serving notice of inspectional findings as specified in § 8-403.30 and would be cited there.)

A notice issued in accordance with this Code shall be considered to be properly served if it is served by one of the following methods:

(A) The notice is personally served by the REGULATORY AUTHORITY, a LAW enforcement officer, or a PERSON authorized to serve a civil process to the PERMIT HOLDER, the PERSON IN CHARGE, or PERSON operating a FOOD ESTABLISHMENT without a PERMIT;

(B) The notice is sent by the REGULATORY AUTHORITY to the last known address of the PERMIT HOLDER or the PERSON operating a FOOD ESTABLISHMENT without a PERMIT, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired; or

(C) The notice is provided by the REGULATORY AUTHORITY in accordance with another manner of service authorized in LAW.

8-801.20 Restriction or Exclusion Order, Hold Order or Summary Suspension.

An EMPLOYEE RESTRICTION or EXCLUSION order, an order to hold and not distribute FOOD, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or a summary suspension order shall be:

(A) Served as specified in ¶ 8-801.10(A); or

(B) Clearly posted by the REGULATORY AUTHORITY at a public entrance to the FOOD ESTABLISHMENT and a copy of the notice sent by first class mail to the PERMIT HOLDER or to the owner or custodian of the FOOD, as appropriate.

8-801.30 When Notice is Effective.

Service is effective at the time of the notice's receipt or if service is made as specified in ¶ 8-801.20(B), at the time of the notice's posting.

8-801.40 Proof of Proper Service.

Proof of proper service may be made by affidavit of the PERSON making service or by admission of the receipt signed by the PERMIT HOLDER, the PERSON operating a FOOD ESTABLISHMENT without a PERMIT to operate, or an authorized agent.

8-9 REMEDIES

Subparts

8-901 Criteria for Seeking Remedies

Administrative

8-902	Inspection Orders
8-903	Holding, Examination, and Destruction of Food
8-904	Summary Permit Suspension
8-905	Hearings Administration
8-906	Hearing Officer, Purpose, Qualifications, Appointment, and Powers
8-907	Rights of Parties and Evidence
8-908	Settlement

Judicial

8-909	Inspection Orders
8-910	Means of Instituting Judicial Enforcement Proceedings
8-911	Criminal Proceedings
8-912	Injunctive Proceedings
8-913	Civil Proceedings

Criteria for Seeking Remedies

8-901.10 Conditions Warranting Remedy.

The REGULATORY AUTHORITY may seek an administrative or judicial remedy to achieve compliance with the provisions of this Code if a PERSON operating a FOOD ESTABLISHMENT or EMPLOYEE:

- (A) Fails to have a valid PERMIT to operate a FOOD ESTABLISHMENT as specified under § 8-301.11;
- (B) Violates any term or condition of a PERMIT as specified under § 8-304.11;
- (C) Allows serious or repeated code violations to remain uncorrected beyond time frames for correction APPROVED, directed, or ordered by the REGULATORY AUTHORITY under §§ 8-405.11(A) and (B), and §§ 8-406.11(A) and (B);

(D) Fails to comply with a REGULATORY AUTHORITY order issued as specified in § 8-501.20 concerning an EMPLOYEE or CONDITIONAL EMPLOYEE suspected of having a disease transmissible through FOOD by infected PERSONS;

(E) Fails to comply with a hold order as specified in § 8-903.10;

(F) Fails to comply with an order issued as a result of a hearing for an administrative remedy as specified in § 8-906.40; or

(G) Fails to comply with a summary suspension order issued by the REGULATORY AUTHORITY as specified in §§ 8-801.20 and 8-904.10.

Administrative

Inspection Orders

8-902.10 Gaining Access to Premises and Records.

(Note: Adoption of this section provides the basis for Subparagraph 8-402.20(A)(3) and § 8-402.40 and would be cited there.)

The REGULATORY AUTHORITY may order access for one or more of the following purposes, subject to LAW for gaining access:

(A) If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection including taking photographs;

(B) To examine and sample the FOOD; and

(C) To examine the records on the PREMISES relating to FOOD purchased, received, or used by the FOOD ESTABLISHMENT.

8-902.20 Contents of Inspection Order.

The REGULATORY AUTHORITY'S inspection order shall:

(A) Stipulate that access be allowed on or to the described PREMISES, FOOD, or records under the order's provisions;

(B) Provide a description that specifies the PREMISES, FOOD, or records subject to the order; and

(C) Specify areas to be accessed and activities to be performed.

***Holding,
Examination,
and Destruction
of Food***

8-903.10 Hold Order, Justifying Conditions and Removal of Food.

(Note: Adoption of this section provides the basis for ¶ 3-202.18(B) and would be cited there.)

(A) According to time limits imposed by LAW, the REGULATORY AUTHORITY may place a hold order on a FOOD that:

- (1) Originated from an unAPPROVED source;
- (2) May be unsafe, ADULTERATED, or not honestly presented;
- (3) Is not labeled according to LAW, or, if raw MOLLUSCAN SHELLFISH, is not tagged or labeled according to LAW; or
- (4) Is otherwise not in compliance with this Code.

(B) If the REGULATORY AUTHORITY has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the REGULATORY AUTHORITY may remove the FOOD that is subject to the order to a place of safekeeping.

8-903.20 Hold Order, Warning or Hearing Not Required.

The REGULATORY AUTHORITY may issue a hold order to a PERMIT HOLDER or to a PERSON who owns or controls the FOOD, as specified in § 8-903.10, without prior warning, notice of a hearing, or a hearing on the hold order.

8-903.30 Hold Order, Contents.

The hold order notice shall:

- (A) State that FOOD subject to the order may not be used, sold, moved from the FOOD ESTABLISHMENT, or destroyed without a written release of the order from the REGULATORY AUTHORITY;

(B) State the specific reasons for placing the FOOD under the hold order with reference to the applicable provisions of this Code and the HAZARD or adverse effect created by the observed condition;

(C) Completely identify the FOOD subject to the hold order by the common name, the label information, a container description, the quantity, REGULATORY AUTHORITY'S tag or identification information, and location;

(D) State that the PERMIT HOLDER has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in §§ 8-905.10 and 8-905.20;

(E) State that the REGULATORY AUTHORITY may order the destruction of the FOOD if a timely request for an appeal hearing is not received; and

(F) Provide the name and address of the REGULATORY AUTHORITY representative to whom a request for an appeal hearing may be made.

8-903.40 Hold Order, Official Tagging of Food.

(A) The REGULATORY AUTHORITY shall securely place an official tag or label on the FOOD or containers or otherwise conspicuously identify FOOD subject to the hold order.

(B) The tag or other method used to identify a FOOD that is the subject of a hold order shall include a summary of the provisions specified in § 8-903.30 and shall be signed and dated by the REGULATORY AUTHORITY.

8-903.51 Hold Order, Food May Not Be Used or Moved.

(A) Except as specified in ¶ (B) of this section, a FOOD placed under a hold order may not be used, sold, served, or moved from the establishment by any PERSON.

(B) *The REGULATORY AUTHORITY may allow the PERMIT HOLDER the opportunity to store the FOOD in an area of the FOOD ESTABLISHMENT if the FOOD is protected from subsequent deterioration and the storage does not restrict operations of the establishment.*

**Summary
Permit
Suspension**

8-903.60 Examining, Sampling, and Testing Food.

The REGULATORY AUTHORITY may examine, sample, and test FOOD in order to determine its compliance with this Code.

8-903.70 Hold Order, Removing the Official Tag.

Only the REGULATORY AUTHORITY may remove hold order tags, labels, or other identification from FOOD subject to a hold order.

8-903.80 Destroying or Denaturing Food.

If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the REGULATORY AUTHORITY may order the PERMIT HOLDER or other PERSON who owns or has custody of the FOOD to bring the FOOD into compliance with this Code or to destroy or denature the FOOD under the REGULATORY AUTHORITY'S supervision.

8-903.90 Releasing Food from Hold Order.

The REGULATORY AUTHORITY shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification from the FOOD if the hold order is vacated.

8-904.10 Conditions Warranting Action.

The REGULATORY AUTHORITY may summarily suspend a PERMIT to operate a FOOD ESTABLISHMENT if it determines through inspection, or examination of EMPLOYEES, FOOD, records, or other means as specified in this Code, that an IMMINENT HEALTH HAZARD exists.

8-904.20 Summary Suspension, Warning or Hearing Not Required.

The REGULATORY AUTHORITY may summarily suspend a PERSON'S PERMIT as specified in § 8-904.10 by providing written notice as specified in § 8-801.20 of the summary suspension to the PERMIT HOLDER or PERSON IN CHARGE, without prior warning, notice of a hearing, or a hearing.

8-904.30 Contents of the Notice.

A summary suspension notice shall state:

(A) That the FOOD ESTABLISHMENT PERMIT is immediately suspended and that all FOOD operations shall immediately cease;

(B) The reasons for summary suspension with reference to the provisions of this Code that are in violation;

(C) The name and address of the REGULATORY AUTHORITY representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and

(D) That the PERMIT HOLDER may request an appeal hearing by submitting a timely request as specified in §§ 8-905.10 and 8-905.20.

8-904.40 Time Frame for Reinspection.

After receiving a written request from the PERMIT HOLDER stating that the conditions cited in the summary suspension order no longer exist, the REGULATORY AUTHORITY shall conduct a reinspection of the FOOD ESTABLISHMENT for which the PERMIT was summarily suspended within 2 business days, which means 2 days during which the REGULATORY AUTHORITY'S office is open to the public.

8-904.50 Term of Suspension, Reinstatement of Permit.

(A) A summary suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the REGULATORY AUTHORITY through reinspection and other means as appropriate.

(B) The suspended PERMIT shall be reinstated immediately if the REGULATORY AUTHORITY determines that the public health HAZARD or nuisance no longer exists. A notice of reinstatement shall be provided to the PERMIT HOLDER or PERSON IN CHARGE.

Hearings Administration

8-905.10 Response to Notice of Hearing or Request for Hearing, Basis and Time Frame.

(Note: Adoption of this section provides the basis for §§ 8-303.30(C) and 8-501.30(C). §§ 8-905.10(C) and (D) would be cited there.)

(A) A PERSON who receives a notice of hearing for an administrative remedy as specified in Part 8-8, § 8-901.10, or § 8-905.30(A) and elects to respond to the notice shall file a response to notice as specified in § 8-905.20 within 7 calendar days after service.

(B) A PERMIT applicant may request a hearing regarding the disposition of an application for a new or revised PERMIT if the REGULATORY AUTHORITY does not issue or deny the PERMIT within the time frame specified in LAW.

(C) A PERMIT HOLDER may request a hearing to address concerns about the REGULATORY AUTHORITY'S denial of application for a PERMIT or request for a VARIANCE, or compliance actions, except that a hearing request does not stay the REGULATORY AUTHORITY'S restriction or exclusion of EMPLOYEES specified in §§ 8-501.10 - 8-501.40, a hold order specified in § 8-903.10, or the imposition of a summary suspension specified in § 8-904.10.

(D) A PERSON desiring a hearing in response to a denial of an application for PERMIT or an adverse administrative determination shall submit a hearing request to the REGULATORY AUTHORITY within 10 calendar days of the date of the denial, inspection, or compliance action, unless the REGULATORY AUTHORITY specifies in

certain situations that the request shall be submitted within a shorter period of time.

8-905.20 Response to a Notice of Hearing or Request for Hearing, Required Form and Contents.

A response to a hearing notice or a request for hearing as specified in § 8-905.10 shall be in written form and contain the following:

- (A) If a response to notice of hearing,
 - (1) An admission or denial of each allegation of fact;
 - (2) A statement as to whether the respondent waives the right to a hearing; and may also contain
 - (3) A statement of defense, mitigation, or explanation concerning any allegation of fact; and
 - (4) A request to the REGULATORY AUTHORITY for a settlement of the proceeding by consent agreement, if the REGULATORY AUTHORITY will provide this opportunity.
- (B) If a request for hearing,
 - (1) A statement of the issue of fact specified in ¶ 8-905.30(B) for which the hearing is requested; and
 - (2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.
- (C) If either a response to notice of hearing or a request for a hearing,
 - (1) A statement indicating whether the presence of witnesses for the REGULATORY AUTHORITY is required; and
 - (2) The name and address of the respondent's or requester's legal counsel, if any.

8-905.30 Provided Upon Request.

The REGULATORY AUTHORITY shall hold hearings according to LAW and the provisions of this Code:

(A) As determined necessary by LAW or the REGULATORY AUTHORITY to accomplish the purpose and intent of this Code specified in § 8-101.10; and

(B) As requested by a PERMIT applicant or a PERMIT HOLDER if:

(1) Requested as specified in § 8-905.10, and

(2) The request demonstrates that there is a genuine and material issue of fact that justifies that a hearing be held.

8-905.40 Provided in Accordance with Law.

Hearings shall be conducted according to LAW, administrative procedures, and this Code.

8-905.50 Timeliness, Appeal Proceeding Within 5 Business Days, Other Proceeding Within 30 Calendar Days.

(A) The REGULATORY AUTHORITY shall afford a hearing:

(1) Except as provided in ¶ (B) of this section, within 5 business days after receiving a written request for an appeal hearing from:

(a) A PERSON who is EXCLUDED by the REGULATORY AUTHORITY from working in a FOOD ESTABLISHMENT as specified in §§ 8-501.10 - 8-501.40,

(b) A PERMIT HOLDER or PERSON whose FOOD is subject to a hold order as specified in Subpart 8-903, or

(c) A PERMIT HOLDER whose PERMIT is summarily suspended as specified in Subpart 8-904; and

(2) Within 30 calendar days but no earlier than 7 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in ¶ 8-905.10(C) or for matters as determined necessary by the REGULATORY AUTHORITY.

(B) A PERMIT HOLDER or PERSON who submits a request for a hearing as specified in Subparagraphs (A)(1)(a)-(c) of this section may waive the prompt hearing in the written request to the REGULATORY AUTHORITY.

8-905.60 Notice, Contents.

A notice of hearing shall contain the following information:

- (A) Time, date, and place of the hearing;
- (B) Purpose of the hearing;
- (C) Facts that constitute the basis or reason for the hearing including specific details of violations or allegations;
- (D) The rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in § 8-907.10;
- (E) At the REGULATORY AUTHORITY'S discretion, the procedure for the respondent to request an offer from the REGULATORY AUTHORITY to settle the matter;
- (F) The consequences of failing to appear at the hearing;
- (G) The maximum sanctions or penalties as specified in ¶¶ 8-906.40(B) - (D) that may result from the hearing if the hearing concerns a proposed administrative remedy and if the facts are found to be as alleged;
- (H) If the hearing concerns a proposed administrative remedy, a statement specifying the form and time frame for response as specified in § 8-905.10;
- (I) Notification that the written response shall include the information specified in § 8-905.20; and

(J) The name and address of the PERSON to whom such written response shall be addressed.

8-905.70 Proceeding Commences Upon Notification.

A hearing proceeding commences at the time the REGULATORY AUTHORITY notifies the respondent of the hearing proceeding.

8-905.80 Procedure, Expeditious and Impartial.

Hearings shall be conducted in an expeditious and impartial manner.

8-905.90 Confidential.

(A) Hearings or portions of hearings may be closed to the public:

(1) If compelling circumstances, such as the need to discuss in the hearing a PERSON'S medical condition or a FOOD ESTABLISHMENT'S trade secrets, indicate that it would be prudent; and

(2) According to LAW, such as an open meetings LAW.

(B) A party to a hearing shall maintain confidentiality of discussions that warrant closing the hearing to the public.

8-905.100 Record of Proceeding.

A complete record of a hearing shall be prepared under the direction of the PERSON conducting the hearing and maintained as part of the REGULATORY AUTHORITY'S records for the FOOD ESTABLISHMENT. *Except as required by LAW, a verbatim transcript of the hearing need not be prepared.*

**Hearing Officer,
Purpose
Qualifications,
Appointment,
and Powers**

8-906.10 Appointment by Regulatory Authority and Purpose.

The REGULATORY AUTHORITY may appoint a PERSON such as an adjudicator, administrative LAW judge, or examiner, hereinafter referred to as a hearing officer, who presides over a proceeding initiated by the REGULATORY AUTHORITY or by a PERSON contesting an action of the REGULATORY AUTHORITY, to perform one or more of the following:

- (A) Hear the facts presented by an applicant or a PERMIT HOLDER;
- (B) Make a decision or recommendation concerning administrative remedies to achieve compliance with this Code; or
- (C) Address other concerns or allegations appropriately raised according to LAW, in the matter before the hearing officer.

8-906.20 Qualifications.

A hearing officer shall be knowledgeable of the provisions of this chapter and the LAW as they relate to hearings, and be:

- (A) A REGULATORY AUTHORITY representative other than the PERSON who inspects the FOOD ESTABLISHMENT or who has any other role in making the decision that is being contested; or
- (B) An individual who is not employed by the REGULATORY AUTHORITY.

8-906.30 Powers, Administration of Hearings.

(A) A hearing officer shall have the following powers in a hearing in which the hearing officer presides:

- (1) Setting and conducting the course of a hearing requested in accordance with or authorized by this Code,

(2) Issuing subpoenas in the name of the REGULATORY AUTHORITY at the request of a party to a hearing, administering oaths and affirmations, examining witnesses, receiving evidence,

(3) Approving a consent agreement on the issues involved in the hearing entered into by the REGULATORY AUTHORITY and the respondent after the respondent receives a hearing notice,

(4) Sustaining, modifying, rescinding, or vacating an order or directive of the REGULATORY AUTHORITY in an appeal hearing proceeding, and if the order or directive is sustained, ordering appropriate measures to execute the REGULATORY AUTHORITY'S order or directive; and

(B) Unless a party appeals to the head of the REGULATORY AUTHORITY within 15 days of the hearing or a lesser number of days specified by the hearing officer:

(1) Rendering a binding decision and final order in a proceeding after conducting a hearing, if the respondent has not waived the right to a hearing, and

(2) Then notifying the respondent of the decision and the order which contains the findings and conclusions of LAW.

8-906.40 Powers, Administrative Remedies.

The hearing officer shall have the following powers in a hearing proceeding concerning an administrative remedy specified in §§ 8-901.10 and 8-905.30:

(A) Issuing orders to abate or correct violations of this Code and establishing a schedule for the abatement or correction of violations;

(B) Making a finding of fact regarding the occurrence of each violation and assessing, levying, and ordering a reasonable civil penalty, according to LAW and not to exceed the amount specified in ¶ 8-913.10(B) for each violation of this Code that is alleged and found to be committed, and calculated based on each day a violation occurs as specified in ¶ 8-913.10(C);

(C) Suspending, revoking, modifying, or imposing reasonable restrictions or conditions on a PERMIT to operate a FOOD ESTABLISHMENT, or ordering the closure of a FOOD ESTABLISHMENT that is operated without a valid PERMIT as required under § 8-301.11;

(D) Making a finding of fact regarding the occurrence of each violation of the REGULATORY AUTHORITY'S or hearing officer's LAWful order issued in accordance with this Code and assessing, levying, and ordering a reasonable civil penalty, in accordance with LAW and not to exceed the amount specified in ¶ 8-913.10(B) for each violation of this Code that is alleged and found to be committed, and calculated based on each day a violation occurs as specified in ¶ 8-913.10(C);

(E) Deferring or suspending the imposition of a decision or execution of an order, and imposing a probationary period, upon the condition that the respondent comply with the hearing officer's reasonable terms and conditions;

(F) Dismissing the appeal if the matter is settled between the REGULATORY AUTHORITY and the respondent after a hearing notice is served;

(G) Ordering reinspection of a FOOD ESTABLISHMENT to determine compliance with a hearing officer's order;

(H) Suspending or ordering the payment of a fee established by the REGULATORY AUTHORITY for a reinspection that is required to determine compliance and for the reinstatement of a PERMIT after suspension;

(I) Retaining and exercising jurisdiction for a specific period of time not to exceed 90 calendar days after the hearing officer's decision and final order is issued, over a respondent who receives a hearing notice; and

(J) Modifying or setting aside an order by rehearing upon the hearing officer's own motion, the motion of the REGULATORY AUTHORITY, or the motion of the respondent.

***Rights of
Parties and
Evidence***

8-907.10 Rights of Parties.

Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

8-907.20 Evidence to be Presented by the Regulatory Authority.

The REGULATORY AUTHORITY shall present at the hearing its evidence, orders, directives, and reports related to the proposed or appealed administrative remedy.

8-907.30 Evidence to be Excluded.

Evidence shall be EXCLUDED:

(A) If it is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by the state's courts; or

(B) Otherwise according to LAW.

8-907.40 Testimony under Oath.

Testimony of parties and witnesses shall be made under oath or affirmation administered by a duly authorized official.

8-907.50 Written Evidence.

Written evidence may be received if it will expedite the hearing without substantial prejudice to a party's interests.

8-907.60 Documentary Evidence.

Documentary evidence may be received in the form of a copy or excerpt.

Settlement

8-908.10 Authorization.

The REGULATORY AUTHORITY may settle a case after a notice of hearing is served by providing a respondent with an opportunity to request a settlement before a hearing commences on the matter and by entering into a consent agreement with the respondent.

8-908.20 Respondent Acceptance of Consent Agreement Is Waiver of Right to Appeal.

Respondents accepting a consent agreement waive their right to a hearing on the matter.

Judicial

Inspection Orders

8-909.10 Gaining Access to Premises and Records.

(Note: Adoption of this section provides the basis for Subparagraph 8-402.20(A)(3) and § 8-402.40 and would be cited there.)

The REGULATORY AUTHORITY may seek access for one or more of the following purposes, according to LAW for gaining access:

(A) If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection including taking photographs;

(B) To examine and sample the FOOD; and

(C) To examine the records on the PREMISES relating to FOOD purchased, received, or used by the FOOD ESTABLISHMENT.

8-909.20 Contents of Court Petition.

In the absence of a specific set of requirements established by LAW, in its petition to the court to compel access the REGULATORY AUTHORITY shall:

(A) Describe in detail the PREMISES, FOOD, or records on or to which access was denied;

(B) Detail the legal authority to regulate and to have access

for a specific purpose on or to the PREMISES, FOOD, or records where access was denied; and

(C) Provide information that the FOOD ESTABLISHMENT possesses a valid PERMIT from the REGULATORY AUTHORITY and that it applies to the PREMISES where access was denied; or

(D) Provide information that a PERSON is known to be or suspected of operating a FOOD ESTABLISHMENT without possessing a valid PERMIT as specified in LAW and under this Code.

8-909.30 Sworn Statement of Denied Access.

The REGULATORY AUTHORITY shall demonstrate to the court by affidavit, sworn testimony, or both that:

(A) Access on or to the PREMISES, FOOD, or records was denied after the REGULATORY AUTHORITY acted as specified in §§ 8-402.20 and 8-402.30; or

(B) There is reason to believe that a FOOD ESTABLISHMENT is being operated on the PREMISES and that access was denied or is sought under a REGULATORY AUTHORITY'S reasonable administrative plan to enforce the provisions of this Code.

8-909.40 Contents of an Order.

Upon petition of the REGULATORY AUTHORITY, the court may issue an inspection order that:

(A) Includes the information specified in ¶¶ 8-902.20(A) - (C); and

(B) Orders or authorizes any other identified agencies and persons including LAW enforcement agencies to execute, or assist with the execution of, the order.

8-909.50 Optional Contents of an Order.

Upon petition of the REGULATORY AUTHORITY, the court may further issue an inspection order that:

- (A) Provides a maximum time limit for the order's execution;
- (B) Authorizes LAW enforcement officers who assist in the order's execution to use necessary force against PERSONS or property to execute the order; and
- (C) Requires that the agencies or PERSONS ordered or authorized to execute the order shall report to the court the date and time of the order's execution and the findings reached by the inspection, examination, or sampling conducted under the order.

***Means of
Instituting
Judicial
Enforcement
Proceedings***

8-910.10 Institution of Proceedings.

(A) Proceedings to enforce this Code may be instituted by the REGULATORY AUTHORITY according to LAW by issuing a citation or summons, by filing a misdemeanor complaint affidavit and request for a warrant of arrest with the court of competent jurisdiction, or by referring the complaint to a grand jury for indictment, as appropriate.

(B) The REGULATORY AUTHORITY may designate a representative to issue summons or citations or sign warrants on behalf of the agency.

***Criminal
Proceedings***

8-911.10 Authorities, Methods, Fines, and Sentences.

(A) The REGULATORY AUTHORITY may seek to enforce the provisions of this Code and its orders by instituting criminal proceedings as provided in LAW against the PERMIT HOLDER or other PERSONS who violate its provisions.

(B) A PERSON who violates a provision of this Code shall be guilty of a misdemeanor, punishable by:

(1) A fine of not more than (designate amount) dollars, or by imprisonment not exceeding 1 year, or both the fine and imprisonment; or

(2) If the PERSON has been convicted once of violating this Code or if there is an intent to defraud or mislead, a fine not exceeding (designate amount) or imprisonment not exceeding (designate time) year(s) or both.

(C) Each day on which a violation occurs is a separate violation under this section.

***Injunctive
Proceeding***

8-912.10 Petitions for Injunction.

The REGULATORY AUTHORITY may, according to LAW, petition a court of competent jurisdiction for temporary or permanent injunctive relief to achieve compliance with the provisions of this Code or its orders.

***Civil
Proceedings***

8-913.10 Petitions, Penalties, and Continuing Violations.

(A) The REGULATORY AUTHORITY may petition a court of competent jurisdiction to enforce the provisions of this Code or its administrative orders and according to LAW collect penalties and fees for violations.

(B) In addition to any criminal fines and sentences imposed as specified in § 8-911.10, or to being enjoined as specified in § 8-912.10, a PERSON who violates a provision of this Code, any rule or regulation adopted in accordance with LAW related to FOOD ESTABLISHMENTS within the scope of this Code, or to any term, condition, or limitation of a PERMIT issued as specified in §§ 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding (designate amount).

(C) Each day on which a violation occurs is a separate violation under this section.

Food Service Establishments: Timelines for Hearing Requests and Holding Hearings

After Receipt of Notice from the Board of Health, Request for a Hearing Must Be Sent Within:

	MA 105 CMR 590.000	FDA, Annex 1
Persons Excluded from Work	10 days [590.015(B)(1)]	7 calendar days [8-905.10]
Embargo Order	10 days [590.015(B)(1)]	7 calendar days [8-905.10]
Summary Suspension of Permit	10 days [590.014(A)(4)(f)]	7 calendar days [8-905.10]
Revocation or Non-Renewal of Permit	10 days [590.014(C)(2)(d)]	None Specified**
Orders to Correct	10 days [590.014(C)(2)(d)]	7 calendar days [8-905.10]
Denial of Permit or		
Adverse Administrative Decisions	10 days * [590.015(B)(1)]	10 calendar days [8-905.10(D)]
Other Administrative Remedies	10 days [590.015(B)(1)]	7 calendar days [8-905.10(A)]

When Request Received, Hearing by Board of Health Must Be Scheduled Within:

	MA 105 CMR 590.000	FDA, Annex 1
Persons Excluded from Work	10 business days [590.015(B)(1)]	5 business days [8-905.50(A)(1)(a)]
Embargo Order	10 business days [590.015(B)(1)]	5 business days [8-905.50(A)(1)(b)]
Summary Suspension of Permit	3 business days [590.014(A)(2) & (A)(5)]	5 business days [8-905.50 (A)(1)(c)]
Revocation of Permit	10 days [590.015(B)(1)]	None Specified**
Orders to Correct	10 days [590.015(B)(1)]	None Specified**
Denial of Permit or		
Adverse Administrative Decisions	10 days [590.015(B)(1)]	7 calendar days [8-905.10]
Other Administrative Remedies	10 days [590.015(B)(1)]	Within 30 calendar days [8-905.50(A)(2)]***

If a Permit Holder agrees to a settlement, then his/her right to a hearing is waived. [FDA, Annex 1,8-908.20]

The Permit Holder can also agree to waive his/her right to a prompt hearing for Persons Excluded from Work, an Embargo Order or a Summary Suspension Hearing. [FDA, Annex 1, 8-905.50(B)]

* *Or less as determined by the Regulatory Authority*

** *Assume that it would be the same as Summary Suspension?*

*** *Not earlier than 7 calendar days.*

Updated December 12, 2018

Model Policy

ENFORCING A SMOKE -FREE SCHOOL

Model Policy to Enforce a Smoke-Free School

In April 2018, Tobacco Free Rhode Island hosted a state-wide tobacco education trainings to reflect on recent data regarding youth tobacco and e-cigarette use. At this training, we took notice that administrators, faculty, and staff were looking for ways to raise awareness and be in compliance with Rhode Island's newly passed law prohibiting e-cigarette smoking in all public schools. The attached document is in response to that need. I hope you find the information useful.

With generous funding from CVS Health, and Tobacco Free Rhode Island serving as the convener, we began a year-long process of gathering stakeholders in an effort to create a recommended policy for Rhode Island Schools that would ensure compliance with the new smoke-free school requirement. This dedicated group comprised of school administrators, disciplinarians, state agency staff, medical professionals, prevention specialists, students, school resource officers, student assistance counselors, and parents who provided insight and their technical expertise which you will find reflected in the policy. This workgroup utilized research about school policy gathered from around the nation and their own expertise to draft the attached recommended school policy. The collaborative drafted and endorsed the attached model policy that we hope will assist you as you work toward implementing a policy for your school.

In August 2018, with the collaboration of Network Partners such as the Regional and Municipal Prevention Coalitions, Tobacco Free Rhode Island delivered a toolkit that included three metal smoke-free school signs to every elementary, middle, and high school in the state declaring that smoking e-cigarettes in or on school property is a violation of Rhode Island General Law. Not sure where your signs ended up? Feel free to reach out!

Please, utilize this policy and reach out if you are in need of technical assistance to help make this process as smooth as possible. Below you will find additional educational resources that may be of assistance to you.

Thank you,



Daniel Fitzgerald, MPH, ICPS

Tobacco Free Rhode Island
American Lung Association
Daniel.Fitzgerald@lung.org
www.TobaccoFree-RI.org
Office: 401-533-5176



CVS Health "Be The First" Resources

- CATCH My Breath
- Stanford Tobacco Prevention Toolkit
- play2PREVENT smokescreen game

RI KIDS COUNT E-Cigarette Fact Sheets

- E-cigarettes and Vaping
- Factors Influencing Youth Use
- State and School Tobacco Policies

Made Possible By:



Rhode Island Smoke-Free School Model Policy

Edited on April 19, 2019

SECTION I. RATIONALE

Tobacco use is the leading cause of preventable death in the United States. 95% of smokers start before the age of 21 and the vast majority of daily smokers begin smoking before the age of 18. The use of tobacco products on school grounds, in school buildings and facilities, on school property or at school-related activities or school-sponsored events, including but not limited to athletic events is detrimental to the health and safety of students, staff and visitors.

In the State of Rhode Island, the smoke-free schools law now bans all Electronic Nicotine Delivery Systems (ENDS) from schools and related properties, along with other tobacco products. ENDS tobacco products, also known as e-cigarettes, vapes, vaping devices, the brand name JUUL, Sourin, PHIX, Blu, etc. can neither be possessed nor used in these settings, according to the new law that went into effect on January 1, 2018. This law includes all RI public, private & charter elementary & secondary schools and includes surrounding school-owned properties.

State law mandates that students, parents, contractors, faculty, staff, administration, and all other visitors are to be smoke-free and tobacco-free on and around school grounds including places rented by a school or visited during a school function.

- RI Smoke-free School Sign is downloadable at:

<http://health.ri.gov/publications/signs/ThisIsATobaccoFreeSchoolCampus.pdf>

- Read § 23-20.9-4: Smoking in Schools, Definitions
- Read § 23-20.9-5: Smoking in Schools, Regulation of smoking in schools

SECTION II. DEFINITIONS

Administrator - Person(s) including but not limited to principals, vice-principals, office personnel, and others who have disciplinary and managerial authority to enforce school policies and penalties.

Staff - Person(s) employed by [insert school name] as some full-time, part-time or independent contractors, as well as volunteers.

Parent/Guardian - Person(s) that have legal guardian status and responsibility over a student enrolled in [insert school name] for educational purposes.

School building - Any building or enclosed walkway that is used or leased for educational purposes.

School grounds - All school buildings, parking lots, athletic fields, loading docks, and /or other school outdoor facilities, and other premises owned or leased by the school for educational purposes.

Student - Person(s) legally enrolled in [insert school name] for educational purposes.

Smoking - “Smoking” or “smoke”, the inhaling, exhaling, burning, or carrying of any lighted or heated cigar, cigarette, pipe or other tobacco product or plant product intended for inhalation in any manner or any form. “Smoking” or “smoke” also includes the use of electronic cigarettes, electronic cigars, electronic pipes, or other similar products that rely on vaporization or aerosolization.

Tobacco paraphernalia - Any device used to aid, ingest, light, burn, or consume any tobacco product as defined herein, including but not limited to pipes, rolling papers, matches or any component or part of a tobacco product. 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 11 other means including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, vape pens, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization.

“Tobacco product” - *Tobacco product* means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoke, heated, 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, and snuff; and (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. Notwithstanding any provision of clauses (1) and (2) in this definition to the contrary, tobacco product includes any component, part, or accessory of a tobacco product, whether or not sold separately; tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

SECTION III. TEXT

Use of tobacco product - No person(s) shall, at any time, use a tobacco product in any school building, on any school grounds, at any athletic event or any school sponsored event or in any school bus or other vehicle used for school purposes. Pursuant to Rhode Island General Law Chapter 23-20.9-5.

Possession of tobacco product - No student shall at any time possess any tobacco product or tobacco paraphernalia in any school building, on any school grounds, at any athletic event or any school-sponsored event or in any school bus or other vehicle used for school purposes.

Confiscation - When there is evidence that a student is in possession of tobacco products or tobacco paraphernalia, administrators or other designated staff may confiscate such items.

Fair and equitable implementation – This policy and penalties for violations of policy will be carried out fairly and equitably. Schools will maintain demographic records on students penalized under policy and conduct periodic review to look for inconsistencies in the types of students being caught and penalized as well as the severity of the punishment. Penalties shall be applied universally regardless of a student’s gender, race, age, ethnicity, primary language, academic standing, immigration status, employment status, family income, zip code, physical abilities, participation in student athletics, the arts, student government, etc.

Cumulative – Because ongoing use of tobacco products indicates addiction and may be triggered by social-emotional circumstances, it is important to intervene with responses that are aligned with student tobacco use at a point in time. For that reason, this policy will not reset at the beginning of each school year but, rather, will be cumulative throughout middle school with a reset upon entering high school at which point any penalties will be cumulative until graduation.

SECTION IV. PENALTIES

First Offense

- Confiscation and destruction of tobacco product including but not limited to e-cigarettes, vaporizers, vape pens, e-hookahs, and other nicotine delivery devices. regardless of student age or parent consent
 - RI General Law (23-20.9-5) prohibits use of tobacco products including e-cigarettes
- Mandatory referral to in-school Student Assistance Counselor (SAC) for three (3) sessions. The school will notify the parent/guardian that the student has been referred to the SAC.
 - The first session with the in-school SAC should occur within one (1) week of offense and should be last for no fewer than thirty (30) minutes. Future sessions will be at the discretion of the SAC.
 - In the case that the school does not currently have a SAC, the student will meet with a school social worker, psychologist, or adjustment counselor for a motivational interview and additional sessions.
- Educational Program
 - If the student does not comply, it would result in school sanctioned discipline
 - Educational Program Option #1:
 - Review of information and complete two-page essay or ten-minute video on one of the following topics
 - Nicotine addiction and the developing brain
 - Health problems associated with long term use of tobacco products
 - History of unethical behavior by tobacco companies and 1997 settlement
 - Essay must be graded by educator and graded at 75.0 numerical level
 - Review and return to student until they meet academic criteria
 - Essay must be completed within five school days of offense
 - Educational Program Option #2:
 - Prevention retreat curated by prevention specialists.
 - Student and their parent/guardian will be mandated to attend a full-day training on substance use prevention, mental health promotion, coping strategies, and will be responsible for taking a pre and post test to measure what they learned
 - Following this prevention retreat, the student and parent must meet with a school personnel to the resources available to them
 - These retreats would be held once per month for all students who have not complied with school substance use/tobacco policies
 - School sanctioned discipline
 - Before or after school detention a half-hour per day for 5 days to be decided by school administrators
 - Restricted hall passes to be decided by school administrators
 - Lavatory use restricted to passing periods or have faculty member accompany student to lavatory (stays outside).

- Student will write a note apologizing to fellow classmates for exposing them to secondhand smoke/vapor/aerosol.

Second Offense

- Confiscation and destruction of tobacco product including but not limited to e-cigarettes, vaporizers, vape pens, e-hookahs, and other nicotine delivery devices. regardless of student age or parent consent
 - RI General Law (23-20.9-5) prohibits use of tobacco products including e-cigarettes
- Mandatory referral to in-school Student Assistance Counselor (SAC) for five (5) sessions. The school will notify the parent/guardian that the student has been referred to the SAC.
 - The first session with the in-school SAC should occur within one (1) week of offense and should be last for no fewer than thirty (30) minutes. Future sessions will be at the discretion of the SAC.
- School sanctioned discipline and educational program
 - Educational program requirements
 - Identical to those outlined in first offense
 - School sanctioned discipline requirements
 - identical to those outlined in first offense
 - Student is accompanied by parents/guardians to meeting with school administrators
 - Discussion of likely future disciplinary responses with parent/guardian and student

Third Offense:

- Confiscation and destruction of tobacco product including but not limited to e-cigarettes, vaporizers, vape pens, e-hookahs, and other nicotine delivery devices. regardless of student age or parent consent
 - RI General Law (23-20.9-5) prohibits use of tobacco products including e-cigarettes
- Mandatory referral to in-school Student Assistance Counselor (SAC) for seven (7) sessions. The school will notify the parent/guardian that the student has been referred to the SAC.
 - The first session with the in-school SAC should occur within one (1) week of offense and should be last for no fewer than thirty (30) minutes. Future sessions will be at the discretion of the SAC.
- School sanctioned discipline and Educational Program
 - Educational program requirements
 - Identical to those outlined in second offense
 - School sanctioned discipline requirements
 - identical to those outlined in second offense
- Referred to School Resource Officer for documentation or arrest
 - SRO discretion
 - Offense report
 - Documentation of all instances of previous violations, school sanctioned discipline, and steps taken to educate and alter behavior
 - Arrest report
 - Referred to Juvenile Hearing Board (diversionary program) or Family Court
- Reparations to peers/classmates – providing education to other students on nicotine addiction, etc.

SECTION V. ENFORCEMENT

Enforcement should be in line with enforcement of any other infraction of the handbook.

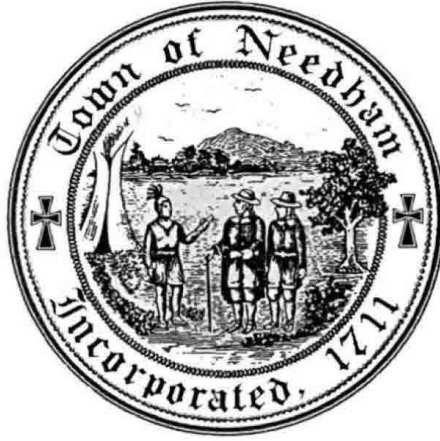
SECTION VI. EFFECTIVE DATE

This policy shall take effect in full on [insert date] upon its passage.

Need Additional Technical Assistance?

Tobacco Free Rhode Island along with their consultants and Youth Advisory Board members can develop tools and resources to assist schools with implementation of this new policy. Assistance may include:

1. Developing an inventory of vetted sources for student written or video research projects to meet the requirement within each penalty phase. (This could be available on blackboard, classroom, basecamp, RIPRC, TFRI website.)
2. Ideas for engaging a diverse cross-sector team from the school community to develop, promote, and monitor the policy over time;
3. Promoting the new policy in a youth voice with a how-to video to accompany policy planning and rollout processes;
4. Ideas for encouraging students to self-report on their own tobacco use (outside of school) so they can get the help they need without fear of being penalized; and,
5. Suggestions for repeatedly reminding students, faculty, staff, parents/guardians, and school visitors of the vaping policy, of nicotine's addictive properties and health impacts; and of ways to get help.



Board of Health

Kathleen Ward Brown, ScD
Member

Edward Cosgrove, PhD
Vice Chair

Stephen Epstein, MD, MPP
Chair

ARTICLE 1

Regulation Affecting Smoking and the Sale and Distribution of Tobacco Products in Needham

A. Statement of Purpose:

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

Whereas, in 2017, among the 8.7% of students nationwide who currently² use electronic vapor products, 13.6% had usually gotten their own electronic vapor products by buying them in a store (e.g., convenience store, supermarket, discount store, gas station, or vape store)³;

Whereas the U.S. General Vice Admiral Jerome M. Adams has noted that youth use of e-cigarettes has reached epidemic proportions and that the U.S. Secretary of Health and Human Services Alex Azar stated that the sharp rate of increased use of e-cigarettes is unmatched among any other substance;⁴

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁵ and the Surgeon General found that nicotine exposure during adolescence, a critical window

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 Current use is defined as having used a tobacco product at least one time in the 30 days prior to the survey.

³ Kann, Laura, Tim McManus, William A Harris, et al. "Youth Risk Behavior Surveillance — United States, 2017." Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report (MMWR), Surveillance Summaries 67(No. 8) (June 15, 2018): 479. <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>

⁴ U.S. Surgeon General, Press Office. (2018, December 18). *Surgeon General releases advisory on E-cigarette epidemic among youth* [Press Release]. Retrieved from <https://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html>.

⁵ 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/.

for brain development, may have lasting adverse consequences for brain development,⁶ and that it is addiction to nicotine that keeps youth smoking past adolescence.⁷

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers⁸;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;⁹

Whereas 18.1 percent of current smokers aged <18 years reported that they *usually* directly purchased their cigarettes from stores (i.e. convenience store, supermarket, or discount store) or gas stations, and among 11th grade males this rate was nearly 30 percent ;¹⁰

Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will likely reduce tobacco initiation, particularly among adolescents 15 – 17, which would improve health across the lifespan and save lives¹¹.

Whereas the 2016 MetroWest Adolescent Health Survey (MHAWS) results show that 5% of Needham high school students used cigarettes on at least one day of the 30 days before the survey, compared with 8% of students in 2014 and 6% of students in 2012. And whereas the 2016 MetroWest Adolescent Health Survey (MHAWS) results show that 13% of Needham high school students used cigarettes in their lifetime, compared with 19% of students in 2014 and 17% of students in 2012.¹²

Whereas flavored cigar dollar sales increased by 53% and unit sales increased by 39% between 2008 and 2011¹³, and 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 youth¹⁴;

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%¹⁵;

Whereas 59% of high school smokers in Massachusetts have tried flavor 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;¹⁶

⁶ 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>.

⁷ *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁸ *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

⁹ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

¹⁰ CDC (2013) Youth Risk Behavior, Surveillance Summaries (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

¹¹ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

¹² MetroWest Adolescent Health Survey: Needham High School Reports 2012 and 2014.

¹³ Delnevo, Cristine D., Daniel P. Giovenco, Bridget K. Ambrose, Catherine G. Corey, and Kevin P. Conway. “Preference for Flavoured Cigar Brands among Youth, Young Adults and Adults in the USA.” *Tobacco Control* 24 (2015): 389–94. <https://doi.org/10.1136/tobaccocontrol-2013-051408>.

¹⁴ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

¹⁵ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents’ Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

¹⁶ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delnevo CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;¹⁷

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹⁸ largely because these flavored products were marketed to youth and young adults,¹⁹ and younger smokers were more likely to have tried these products than older smokers²⁰, neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas flavoring agents increase the appeal of tobacco products to youth and tobacco use initiation and progression to tobacco dependence are more common with the use of the flavored products²¹;

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;²²

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco related death and disease is for local governments to ban categories of products from retail sale;²³

Whereas 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;²⁴

Whereas 5.8% of Massachusetts youth currently use e-cigarettes and 15.9% have tried them²⁵ and in Needham 17% of Needham high school students currently use e-cigarettes and 29% of those students have tried e-cigarettes once in their lifetime, according to the 2014 MetroWest Adolescent Health Survey (MHAWS).²⁶

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;²⁷

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. 508-530, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁸ 21 U.S.C. § 387g.

¹⁹ 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.

²⁰ 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.

²¹ Farber, et al. “Protecting Children From Tobacco, Nicotine, and Tobacco Smoke.”

²² 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.

²³ See fn. 3 at p. 85.

²⁴ Centers for Disease Control & Prevention. 2015. “Tobacco Use Among Middle and High School Students — United States, 2011–2014,” *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381–385;

²⁵ Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS)

²⁶ MetroWest Adolescent Health Survey: Needham High School Reports 2012 and 2014.

²⁷ 310 CMR 30.136

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 one²⁸;

Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle school students increased from 0.6% in 2011 to 4.9% in 2018 and electronic cigarette use among high school students increased from 1.5% in 2011 to 20.8% in 2018²⁹;

Whereas electronic cigarettes have been shown to cause nicotine addiction in adolescents³⁰ and create more combustible cigarette and tobacco product users^{31, 32};

Whereas more than 8 out of 10 teen e-cigarette users (ages 12-17) report using products flavored to taste like menthol, alcohol, candy, fruit, chocolate, or other sweets³³;

Whereas the most commonly cited reasons for using e-cigarettes among both youth and young adults are curiosity, flavoring/taste, and low perceived harm compared to other tobacco products, while use of e-cigarettes as an aid to quit conventional cigarettes is not reported as a primary reason for use among youth and young adults³⁴;

Whereas flavored, including menthol, tobacco product use is highest among those 12-17 years old and lowest among those older than 65 years old³⁵;

Whereas in 2017-2018, current use of menthol- or mint-flavored e-cigarettes among high-school students increased from 42.3% to 51.2%, and from 21.4% to 38.1% among exclusive e-cigarette users³⁶;

Whereas research indicates youth who first tried a flavored tobacco product are more likely to become current tobacco users than those who first tried a non-flavored product³⁷;

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 is 10.8% in 2013;³⁸

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;³⁹

²⁸ 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>.

²⁹ Cullen, Karen A., Bridget Ambrose, Andrea S. Gentzke, et al. "Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018." *Centers for Disease Control and Protection, Morbidity and Mortality Weekly Report (MMWR)* 67, no. 45 (November 16, 2018): 1276–77. <https://doi.org/10.15585/mmwr.mm6745a5>.

³⁰ Case, Kathleen R., Dale S. Mantey, MeLisa R. Creamer, et al. "E-Cigarette- Specific Symptoms of Nicotine Dependence among Texas Adolescents." *Addictive Behaviors* 84 (September 2018): 57–61. <https://doi.org/10.1016/j.addbeh.2018.03.032>.

³¹ Dunbar, Michael S., Jordan P. Davis, Anthony Rodriguez, et al. "Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-Cigarette and Cigarette Use Trajectories From Late Adolescence to Young Adulthood." *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, October 2, 2018. <https://doi.org/10.1093/ntn/nty179>.

³² Bold, Krysten W., Grace Kong, Deepa R. Camenga, et al. "Trajectories of E-Cigarette and Conventional Cigarette Use Among Youth." *Pediatrics* 141, no. 1 (January 1, 2018): e20171832. <https://doi.org/10.1542/peds.2017-1832>.

³³ Centers for Disease Control and Prevention (CDC). "E-Cigarettes and Young People." Centers for Disease Control and Prevention, January 31, 2017. <https://www.cdc.gov/features/ecigarettes-young-people/index.html>.

³⁴ "E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General." Rockville, MD: U.S. Department of Health and Human Services, 2016. https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.

³⁵ Villanti, Andrea C., Amanda L. Johnson, Bridget K. Ambrose, K. et al. "Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)." *American Journal of Preventive Medicine* 53, no. 2 (August 2017): 139–51. <https://doi.org/10.1016/j.amepre.2017.01.026>.

³⁶ Cullen, et al. "Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students — United States, 2011–2018."

³⁷ Villanti, et al. "Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014)."

³⁸ See fn. 7.

³⁹ 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.

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”⁴⁰.

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

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Needham Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states 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:

Adult-only 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 minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Needham Board of Health.

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers regardless of any content.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, , imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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.

⁴⁰ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

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

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

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

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

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

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

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

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A 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.

Listed or non-discounted price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the state price, and before the application of any discounts or coupons.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

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

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

Person: Any 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.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

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

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products 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".

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, liquid nicotine, "e-liquids" 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" also includes all nicotine delivery products. "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.

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

Workplace: Any enclosed area of a structure, indoor area, facility or a portion thereof at which one (1) 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); other 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. It also include motor vehicles, employee lounges, restrooms, conference rooms, hallways, stairways and entrance ways, as well as exterior, unenclosed spaces at stairs, ramps, landings, patios, porches, decks, adjacent yards, loading docks and other areas within twenty (20) feet of the entrance doors or other areas where smoke would migrate into the enclosed area of a structure.

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 herein, to be sold to a person under the minimum legal sales age; or give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Needham is 21 years.

2. Required Signage:

- a. 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. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Needham 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 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 hand rolled cigars must display a warning about cigar consumption in a sign at least 50 square inches pursuant to 940 CMR 22.06 (2) (e).
- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Needham Board of Health 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 that rely on vaporization or aerosolization, as defined herein as “tobacco products”, 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 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 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 (4) feet or greater than nine (9) feet from the floor.

3. 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.

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

5. No person or entity selling tobacco products shall allow anyone under twenty one (21) years of age to sell tobacco products.

E. Tobacco Product Sales Permit:

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

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Needham regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. As a condition for obtaining and/or renewing a Tobacco Sales Permit, the Needham Board of Health may require tobacco retailers and any employee involved in the act of sale of tobacco products to participate in training programs provided by or approved by the Board regarding compliance with the laws and regulations prohibiting the sale of tobacco products to minors and to individuals under the age of 21.

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

5. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

6. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Needham Board of Health annually.

7. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that wishes to sell tobacco products, as defined herein, must apply for a new permit Tobacco Product Sales Permit and one may only be issued at the Needham Board of Health's discretion. At the very least, no new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

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

9. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.

10. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) six times within the 36 month period of performance (which begins on the

effective date of this regulation's amendment, July 1, 2017) and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.

11. Maximum Number of Tobacco Product Sales Permits.

- a. At any given time, there shall be no more than ten (10) Tobacco Product Sales Permits issued in Needham (reduced by the number of permits not renewed pursuant to subsection (b) below). No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
- b. As of July 1, 2017, any permit not renewed because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, or because the ownership of the establishment with the Tobacco Product Sales Permit changes ownership, shall be returned to the Needham Board of Health and may, at the Board's discretion, be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph 11(a) shall be reduced by the number of the retired permits.
- c. A Tobacco Product Sales Permit may, at the Board of Health's discretion, 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. This provision does **not** apply to existing permit holders in good standing that are within 500 feet of a public or private elementary or secondary school.
- d. A Tobacco Product Sales Permit may, at the Board of Health's discretion, not be issued to any new applicant for a retail location within 500 feet of an existing Tobacco Product Sales Permit holder as measured by a straight line from the nearest point of the proposed permit holder's property line to the nearest point of the property line of the site of the applicant's business premises. This provision does **not** apply to existing permit holders in good standing that currently located within an existing Tobacco Product Sales Permit holder.
- e. Applicants who purchase an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale of said business must apply within sixty (60) days of such sale for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein, and permit issuance shall be subject to the conditions of this Section.

F. Cigar Sales Regulated:

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 factory-wrapped 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 two dollars and fifty cents (\$2.50) or more.
 - b. 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 Needham.

4. The Needham Board of Health shall 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:

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

H. Prohibition of the Sale of Blunt Wraps:

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

I. Free Distribution and Coupon Redemption: No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 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.

J. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Needham Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All 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."

K. 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.

L. Vending Machines:

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

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

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

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

No health care institution located in Needham 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.

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

No educational institution located in Needham 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.

P. Incorporation of Attorney General Regulation 940 CMR 21.00:

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”).

Q. PROHIBITION ON SMOKING IN PUBLIC PLACES AND WORKPLACES: No person shall smoke or use an e-cigarette nor shall any person having control of the premises upon which smoking is prohibited by this regulation or by M.G.L. c. 270, §22, or the business agent or designee of such person, permit a person to smoke or use an e-cigarette in any of the following places as defined herein: restaurants and all outdoor areas of restaurants, bars, taverns, and any other outdoor place where food and/or beverages, and/or non-alcoholic beverages are sold, served, or otherwise consumed or carried, health care facilities, municipal buildings, municipal vehicles, public places, public transportation, retail stores, town-owned parks and playgrounds, town-owned athletic fields, town-owned property, conservation land, nursing homes, hotels, motels, inns, bed and breakfast, lodging homes, any establishment that is required to possess a valid Tobacco Sales Permit from the Needham Board of Health (including, but not limited to, smoke shops, tobacconists, retail tobacco stores) and workplaces except as otherwise provided in § Q.2 of this regulation. It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace as well as those workplaces listed. Additionally, no person shall smoke in any place in which a sign conforming to the

requirements of Section Q.1 of this regulation is posted. No person shall remove a sign posted under the authority § Q.1 of this regulation.

1. Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Needham Board of Health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Needham Board of Health.
2. Notwithstanding any other provision of these regulations, smoking may be permitted in the following places and/or under the following circumstances consistent with all applicable state laws:
 - a. Private residences except those portions used as a public place, food service establishment, child care, adult care, or health care office during the hours when operating as such.
 - b. Hotel, motel, inn and bed and breakfast rooms rented to guests at smoke free (100%) at all times. A room so designated shall have signs posted indicating that no smoking is allowed.
 - c. Private clubs if all employees are members. When a private club is open to the general public, that portion of said establishment open to the general public must be smokefree, separately enclosed and shall have self-closing doors. Premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by an association during the time of the permitted activity if the premises are not located in a public building. Smoking may be permitted in a distinct part of the premises of a membership association, provided that this part (a) is physically separated from any area open to the public or occupied by a non-member who is not a guest. The separation shall be sufficient to prevent any migration of smoke into the public areas. Any doors separating the areas shall be self-closing; (b) is occupied solely by those persons specified in 105 CMR 661.100(b). The membership association shall adopt and effectively implement a policy that ensures only such persons are permitted to enter the part of the premises where smoking is permitted; and (c) there are no signs inviting or encouraging the public or non-members who are not guests to enter. No smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:
 - 1) open to the public. A membership association shall be regarded as open to the public when it has signs or advertising inviting or encouraging non-members to the premises or takes other action that may reasonably be regarded as inviting or allowing non-members to enter the premises.; or
 - 2) occupied by a non-member who is not an invited guest of a member or an employee of the association. A non-member shall be regarded as a guest if entering the premises (a) accompanied by a member, provided the member remains on the premises while the guest is present, and (b) signing a guest register that clearly specifies the name and address of the guest and the inviting member;
 - 3) rented from the association for a fee or other agreement that compensates the association for the use of such space; OR
 - 4) occupied by a contract employee, temporary employee or independent contractor.
 - 5) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a

member, and the employees of the membership association. A person shall not be regarded as a member if entering the premises under terms of a membership that differ in duration, cost or privileges from the terms of a full membership in the association. A person who is a contract employee, temporary employee, or independent contractor shall be considered an employee of a membership association under this subsection. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purpose of this association.

Nothing shall prohibit an establishment from being completely smokefree.

R. Smoking Bars:

Smoking bars are prohibited in the Town of Needham.

S. Violations:

1. 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:

- a. In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- b. In the case of a second violation within 36 months of the date of the first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
- c. In the case of a third violation within 36 months of the date of the first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- d. In the case of a fourth violation within 36 months of the date of the first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for ninety (90) consecutive business days.
- e. In the case of a fifth violation or repeated, egregious violations of this regulation within a 36 month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and shall permanently 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 thirty (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 of Health issued permits for thirty (30) consecutive business days.

4. The Needham 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 Needham Board of Health shall suspend or revoke the

Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. 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.

T. 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, § 21D or by filing a criminal complaint at the appropriate venue.

U. **Separate Violations:** Each day any violation exists shall be deemed to be a separate offense.

V. Enforcement:

Enforcement of this regulation shall be by the Needham Board of Health, its Director of Health & Human Services, and its designated agents.

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

W. 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.

X. Effective Date:

A public meeting about this regulation occurred in October and November 2018. A public hearing occurred on December 12 and December 14, 2018. This regulation was approved by a unanimous vote of the Needham Board of Health on January 11, 2019, and shall take effect on July 1, 2019.

A notice and summary of the regulation was posted by the Needham Town Clerk, was posted on the Needham Public Health Division's website, and was published in a newspaper in circulation in the Town of Needham. Copies of this regulation have also been filed with the Needham Town Clerk and the Massachusetts Department of Environmental Protection.

The original Needham Board of Health smoking and tobacco regulation was enacted in September 1991. It has been amended extensively over the years, most notably in 2005 with the enactment of the Tobacco 21 policy, which was phased-in over a three year period. This regulation was amended again in 2009 with the implementation of a prohibition on the sale of tobacco products in pharmacies. A ban on flavored tobacco was incorporated in 2015.

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

RECEIVED
TOWN CLERK
BELMONT, MA

2010 JUL 24 AM 8:37

A. Statement of Purpose:

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

Whereas 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 station²;

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 cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development⁵;

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 research has shown that raising the minimum legal drinking age to 21 has reduced alcohol consumption among youth and protected drinkers from long-term negative outcomes in adulthood, including alcohol and other drug dependence⁶;

More than 80 percent of all adult smokers begin smoking before the age of 18; and more than 90 percent do so before leaving their teens⁷;

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

² CDC (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>.

³ 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.

⁴ 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/.

⁵ 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>.

⁶ DeJong W, Blanchette J 2013. "Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States." *J. Stud. Alcohol Drugs, Supplement 17*, 108 – 115, 2014.

⁷ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health.

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 youth⁸;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010⁹; 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;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 non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic 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

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>.

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.

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;¹⁷

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸

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 one¹⁹;

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 2011²⁰;

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 underreported²¹;

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 history²²;

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%²³;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes²⁴;

¹⁷ Centers 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.

¹⁸ 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.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.

¹⁹ 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>.

²⁰ 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)).

²¹ 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.

²² Commonwealth 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.

²³ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995–998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug; 32(3-4):161–70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

²⁴ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

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 quit²⁵ and high prices deter youth from starting.²⁶ 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;

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)²⁷;

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”²⁸.

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen²⁹; and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and whereas the sale of tobacco products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication; now, therefore it is the intention of the Belmont Board of Health to regulate the access of tobacco products.

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

²⁵ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

²⁶ Chaloupka, 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/>.

²⁷ TTB (2011). *Statistical Report – Tobacco* (2011) (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

²⁸ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

²⁹ Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000)

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Belmont Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

C. Definitions:

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

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.

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.

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.

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 provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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.

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 (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or

disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

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

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

Person: Any 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.

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

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

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

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products 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".

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.

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

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

1. 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 Belmont is 21.

2. Required Signage

- a. 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. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Belmont 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 shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Belmont Board of Health 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 herein, 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 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.

3. 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.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the Town of Belmont without first obtaining a Tobacco Product Sales Permit issued annually by the Belmont Board of Health. Only owners of establishments with a permanent, non-mobile location in Belmont are eligible to apply for a permit and sell tobacco products at the specified location in Belmont.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Belmont regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.
4. The fee for a Tobacco Product Sales Permit shall be determined by the Belmont Board of Health annually.
5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.
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, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco 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.
8. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
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. As of the effective date of this regulation, any applicant for a new Tobacco Product Sales Permit shall be subject to an approval process conducted by the Belmont Board of Health which will include, but not be limited

to a review of previous tobacco compliance check results for the applicant in any establishment the applicant currently or previously owned.

12. 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. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

13. Maximum Number of Tobacco Product Sales Permits:

- a. At any given time, there shall be no more than fourteen (14) Tobacco Product Sales Permits issued in Belmont, reduced by the number of permits not renewed pursuant to subsection (c) below. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
- b. At any given time, of the allowed Permit number in subsection (a) above, there shall be no more than two (2) Tobacco Product Sales Permits issued to Retail Tobacco Stores, per the definition, in Belmont. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
- c. As of the effective date, any permit not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Belmont Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.
- d. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein. Such applicant may choose to apply for a Tobacco Product Sales Permit for a Retail Tobacco Store if the Current Permit Holder possessed the same or if a Tobacco Product Sales Permit for a Retail Tobacco Store is available per subsection (b).

F. Cigar Sales Regulated:

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 two dollars and fifty cents (\$2.50) or more.
 - b. 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 Belmont.
4. The Belmont 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.

G. Sale of Flavored Tobacco Products Prohibited:

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

H. Prohibition of the Sale of Blunt Wraps:

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

I. Free Distribution and Coupon Redemption:

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

J. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of liquid nicotine, an “acutely hazardous waste” as identified in 310 CMR 30.136, must provide the Belmont Board of Health with a written plan for disposal of said product, including a disposal plan for any breakage or spillage of the product.

K. 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.

L. Vending Machines:

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

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

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

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

No educational institution located in Belmont 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.

O. Prohibition of the Sale of Tobacco Products by Health Care Institutions

No health care institution located in the town of Belmont shall sell or cause to be sold tobacco products. 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.

P. Violations:

1. 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:
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - b. In the case of a second violation within 24 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a 24 month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (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 thirty (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 of Health issued permits for thirty (30) consecutive business days.
4. The Belmont 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 Belmont Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. 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.

Q. 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 or by filing a criminal complaint at the appropriate venue.

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

R. Enforcement:

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

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

S. 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.

T. Effective Date:

This regulation shall take effect on August 1, 2018.

A Public Hearing was held on July 16, 2018. The Public Hearing was advertised in the Belmont Citizens Herald on June 21, 2018.

The Board of Health Members, by 3-0 vote on July 16, 2018, voted to adopt the Regulation Restricting the Sale of Tobacco Products.

The Enactment of the Regulation Restricting the Sale of Tobacco Products was advertised in the Belmont Citizens Herald on August 2, 2018

The Regulation of the Belmont Board of Health Restricting the Sale of Tobacco Products supersedes the previous version, Regulations of the Belmont Board of Health Sale of Tobacco Products to Minors, as amended January 1, 2015.

TOWN OF BELMONT

BY ITS BOARD OF HEALTH

1. Donna S. David

Donna S. David, R.N., M.N.

2. Julie C. Lemay

Julie C. Lemay, M.P.H.

3. Stephen M. Fiore

Stephen M. Fiore, ESQ.

940 CMR 21.00: Sales And Distribution Of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices In Massachusetts

21.01: Purpose

21.02: Scope

21.03: Definitions

21.04: Point of Sale Restrictions

21.05: Liquid Nicotine Packaging

21.06: Relation to Other Laws

21.07: Severability

21.08: Effective Date

21.01: Purpose

The Attorney General of Massachusetts promulgates 940 CMR 21.00 relating to cigarette, smokeless tobacco product, and electronic smoking device manufacturers and retailers pursuant to his or her authority in M.G.L. c. 93A, § 2(c). The purpose of 940 CMR 21.00 is to eliminate deception and unfairness in the way cigarettes, smokeless tobacco products, and electronic smoking devices are marketed, sold and distributed in Massachusetts in order to address the incidence of cigarette smoking, the use of smokeless tobacco and electronic smoking devices by youth. 940 CMR 21.00 imposes requirements and restrictions on the sale and distribution of cigarettes and smokeless tobacco products and electronic smoking devices in Massachusetts in order to prevent access to such products by underage consumers and accidental injury to children as a result of ingestion of or contact with liquid nicotine.

21.02: Scope

The Attorney General's regulations define unfair or deceptive acts or practices. They are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a) and they do not legitimize acts or practices not specifically prohibited by 940 CMR 21.00. 940 CMR 21.00 is designed to supplement existing regulations.

940 CMR 21.00 shall apply to any person who manufactures, packages, imports for sale, distributes or sells within Massachusetts cigarettes, smokeless tobacco products, or electronic smoking devices as defined in 940 CMR 21.00.

940 CMR 21.00 shall not apply to the manufacture, packaging, importation for sale or distribution within Massachusetts of cigars and little cigars. These products are regulated by 940

21.03: Definitions

Adult-Only Retail Facility means a facility where the retailer ensures that no person younger than the Minimum Legal Sales Age is present or permitted to enter at any time.

Brand Name means a brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of cigarette, smokeless tobacco, or electronic smoking devices.

Cigarette shall be defined as that term is defined in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§ 1331 *et seq.*

Distributor means any person who furthers the distribution of cigarettes, smokeless tobacco, or electronic smoking devices whether domestic or imported, at any point from the original place of manufacture to the person who sells or distributes the product to individuals for personal consumption.

Electronic smoking device means any product that can deliver nicotine to the user through inhalation of vapor. Electronic smoking device includes 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, and does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for the approved purpose.

Manufacturer means any person, including any repacker and/or relabeler, who manufactures, fabricates, assembles, processes, or labels a finished cigarette, smokeless tobacco product, or electronic smoking device.

Minimum Legal Sales Age means the age an individual must be before that individual can be sold cigarettes, smokeless tobacco products, or electronic smoking devices as established by statute, regulation, by-law or local ordinance which in no instance shall be less than 18 years of age.

Package means a pack, box, carton, pouch, or container of any kind in which cigarettes, smokeless tobacco products, or electronic smoking devices, are offered for sale, sold, or otherwise distributed to consumers.

Point of sale means any location at which a consumer can purchase or otherwise obtain cigarettes, smokeless tobacco products, or electronic smoking devices, for personal consumption.

Retailer means any person who sells cigarettes, smokeless tobacco products, or electronic smoking devices to individuals in Massachusetts for personal consumption, or who operates a facility located within Massachusetts where vending machines are located.

Sale or distribution shall be defined to include the exchange of cigarettes, smokeless tobacco, or electronic smoking devices for money and the sampling or any other distribution of cigarettes, smokeless tobacco, or electronic smoking devices not for sale.

Secret shopper program shall be defined to include, at a minimum, six visits per year to a retail sales outlet by a person retained by a retailer, where the person poses as a customer in order to ensure the outlet's employees compliance with laws and/or local ordinances prohibiting the sale of cigarettes, smokeless tobacco products, or electronic smoking devices to minors, with each visit made on a different day and at a different time, and, where practical, to a different outlet employee.

Smokeless Tobacco shall be defined as that term is defined in the Federal Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. §§ 4401 *et seq.*

21.04: Point of Sale Restrictions

(1) Retail Sales Practices.

Except as otherwise provided in 940 CMR 21.04(4), it shall be an unfair or deceptive act or practice for any manufacturer, distributor or retailer to engage in any of the following practices:

(a) sampling, promotional give-aways, or any other free distribution of cigarettes, smokeless tobacco products, or electronic smoking devices;

(b) breaking or otherwise opening any cigarette, smokeless tobacco product, or electronic smoking device's package to sell or distribute any number of unpackaged or repackaged

cigarettes or any quantity of smokeless tobacco or electronic smoking devices that is smaller than the smallest package distributed by the manufacturer for individual consumer use;

(c) distributing cigarettes, smokeless tobacco products, or electronic smoking devices through the mail, including redemption of coupons, credits and proofs-of-purchase, except as otherwise provided in 940 CMR 21.00; or

(d) selling or distributing cigarettes, smokeless tobacco products, or electronic smoking devices where apparel or merchandise (other than cigarettes, smokeless tobacco, or electronic smoking devices) bears a brand name and is offered in consideration of the purchase of cigarettes, tobacco products, and electronic smoking devices.

(2) Retail Outlet Sales Practices.

Except as otherwise provided in 940 CMR 21.04(4), it shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes, smokeless tobacco products, or electronic smoking devices through a retail outlet located within Massachusetts to engage in any of the following retail outlet sales practices:

(a) Selling cigarettes, smokeless tobacco products, or electronic smoking devices in any manner other than in a direct, face-to-face exchange without the assistance of any vending machines or any other electronic or mechanical device, except as otherwise provided in 940 CMR 21.00;

(b) Failing to verify by means of valid government-issued photographic identification that each person purchasing cigarettes, smokeless tobacco, or electronic smoking devices is the Minimum Legal Sales Age or older. No such verification is required for any person who appears 27 years of age or older;

(c) Using self-service displays of cigarettes, smokeless tobacco products, or electronic smoking devices; or

(d) Failing to place cigarettes, smokeless tobacco products, or electronic smoking devices out of the reach of all consumers, and in a location accessible only to retail outlet personnel.

(3) Retail Outlet Prevention Measures.

It shall be an unfair or deceptive act or practice for any person who sells or distributes cigarettes, smokeless tobacco products, or electronic smoking devices through a retail outlet located within Massachusetts to sell cigarettes, smokeless tobacco products, or electronic smoking devices to

consumers without implementing all prevention measures reasonably necessary to prevent the sale of cigarettes or smokeless tobacco products to consumers younger than the Minimum Legal Sales Age. A person is presumed to have complied with this provision if such person has implemented the following prevention measures:

(a) For any retailer who employs six or more persons, undertaking an in-house secret shopper program at all retail outlets as a routine part of its business, and implementing and operating the prevention measure set forth in 940 CMR 21.04(3)(b). A retailer who receives during any calendar year official written notification from a state or local governmental authority of passing a tobacco compliance check is presumed to comply with this prevention measure for the next calendar year as to each retail sales outlet referenced in such notification as passing the compliance check; or

(b) For any retailer who employs five or fewer persons, implementing and operating a training program for all employees who handle exchanges of cigarettes, smokeless tobacco products, or electronic smoking devices regarding compliance with laws and/or local ordinances prohibiting the sale of such products to minors. A model training program for tobacco retailers is available to all retailers at the Office of the Attorney General.

(4) Exceptions to Prohibited Retail Sales and Retail Sales Outlet Practices.

The following retail sales and retail sales outlet practices are not unfair or deceptive:

(a) Mail-order or internet sales that are subject to verification that the purchaser is at least the Minimum Legal Sales Age. Verification of age through the mail or internet shall consist of, at a minimum, (i) verification that the purchaser is of the Minimum Legal Sales Age through a commercially available database, or aggregate of databases, that is regularly used by government and business for the purpose of age and identity verification and (ii) use of a method of mailing, shipping, or delivery that requires signature of a person who is of the Minimum Legal Sales Age before the shipping package is released. Any information required to complete the age verification process must be requested on a form separate from that used to collect payment information, shall not include Personal Information as defined by G.L. c. 93H, and shall not be used for any purposes other than age verification. Mail order or internet sales are subject to the sales practices described in 940 CMR 21.04(1)(a) and (b).

(b) Vending machines that are located in an Adult-Only Retail Facility licensed under M.G.L. c. 138, s. 12, to serve alcoholic beverages for consumption on the premises, if the vending machine:

- i. is equipped with a lock-out device that locks out sales from the vending machine unless the locking mechanism is released by an outlet employee. The release mechanism must not allow continuous operation of the vending machine and must be out of the reach of all consumers and in a location accessible only to outlet personnel;
- ii. is located within the immediate vicinity and exclusive control of outlet personnel such that all purchases are observable by the outlet employee(s) controlling the lock-out device; and
- iii. is posted with a sign stating that those below the Minimum Legal Sales Age are not permitted to purchase tobacco and notifying customers of the lock-out device and identifying the outlet employee(s) to contact to purchase tobacco from the machine.

(c) Self-service displays that are located within Adult-Only Retail Facilities.

21.05: Liquid Nicotine Packaging

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 standards for special packaging as set forth in 15 U.S.C. §§ 1471 through 1476 and 16 CFR § 1700 *et seq.*

21.06: Relation to Other Laws

Nothing in 940 CMR 21.00 shall relieve any person from liability at common law or under Massachusetts statutory law to any other person.

Nothing in 940 CMR 21.00 shall be construed to preempt any existing law, ordinance, bylaw, regulation or rule which requires a permit or license for the sale of cigarettes, smokeless tobacco, or electronic smoking devices, or which regulates the sale, use, or distribution of cigarettes, smokeless tobacco, or electronic smoking devices. Nothing in this regulation shall prohibit any city, town or board of health from enacting or enforcing any law, ordinance, bylaw, regulation or rule which requires a permit or license for the sale of cigarettes, smokeless tobacco, or electronic smoking devices, or which regulates the sale, use, or distribution of cigarettes, smokeless tobacco, or electronic smoking devices. Without limiting the generality of the foregoing, nothing in 940 CMR 21.00 shall prohibit any city, town, or board of health from enacting or enforcing any law, ordinance, bylaw, regulation or rule which imposes a monetary penalty, permit

suspension or permit revocation for a violation of the local law. In cases where the ordinance, bylaw, regulation or rule is more restrictive than the provisions of 940 CMR 21.00, it shall control to the extent of any inconsistency with 940 CMR 21.00.

21.07: Severability

If any provision of 940 CMR 21.00 or the application of such provision to any person or circumstances is held to be invalid, the validity of the remainder of 940 CMR 21.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 21.00: M.G.L. c. 93A, § 2(c).

NEEDHAM PUBLIC HEALTH DIVISION



April 17, 2019

Tobacco Compliance Checks



The Needham Public Health Division, in conjunction with the Needham Police Department conducts quarterly tobacco compliance checks in the Town to enforce the Needham Board of Health Tobacco Regulation (Article 1). Under Article 1, no tobacco permit holder in the Town may sell to persons less than 21 years of age. Article 1 § D.3 reads, "Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years or older. Verification is required for any person under the age of 27." There are currently 11 permitted tobacco vendors in the Town. During the compliance checks, the Environmental Health Agent and a Needham Police Officer work with a local student under 21 years of age. The student attempts to buy tobacco products from each tobacco permit holder without an ID. If sales are made to the student, the tobacco permit holder is subject to the following penalties under Article 1 § S.:

- a) In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
- b) In the case of a second violation within 36 months of the date of the first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
- c) In the case of a third violation within 36 months of the date of the first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
- d) In the case of a fourth violation within 36 months of the date of the first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for ninety (90) consecutive business days.
- e) In the case of a fifth violation or repeated, egregious violations of this regulation within a 36 month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and shall permanently revoke a Tobacco Product Sales Permit.

For the April 17, 2019 compliance checks, one underage male student from Olin College assisted with the compliance check with the current Environmental Health Student Intern. **There was no sale made to the underage buyer.** Attached is a complete summary detailing each compliance check.



<u>Establishment:</u>	Roche Bros. Supermarket, Inc.
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Grocery Store
<u>Time:</u>	2:06 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked age?:</u>	No
<u>Sex of Clerk:</u>	Female
<u>Age of clerk:</u>	Older Adult
<u>Type of tobacco asked for:</u>	Marlboro
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy of cigarettes.

<u>Establishment:</u>	7-Eleven #32485B, 845 Highland Ave.
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Convenience Store
<u>Time:</u>	1:27 pm

<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Adult
<u>Type of tobacco asked for:</u>	JUUL Pods
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy of JUUL Pods. No sale was made. The of-age purchaser bought a 4 pack of JUUL Pods which cost approximately \$21.

<u>Establishment:</u>	Great Plain Ave. Gas, Inc.
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Gas Mini-Mart
<u>Time:</u>	1:51 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Adult
<u>Type of tobacco asked for:</u>	Blu E-cigarettes
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted to JUUL Pods. No sale was made. Clerk made a comment after attempt, "Good test."

<u>Establishment:</u>	Needham Service Center, Inc.
<u>Type of Establishment:</u>	Independent
<u>Style of Establishment:</u>	Gas Mini-Mart
<u>Time:</u>	1:43 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Older Adult
<u>Type of tobacco asked for:</u>	Marlboro
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy of cigarettes and no sale was made.

<u>Establishment:</u>	Needham Center Fine Wine
<u>Type of Establishment:</u>	Independent

<u>Style of Establishment:</u>	Liquor Store
<u>Time:</u>	1:54 pm
<u>Purchaser asked for ID?:</u>	No
<u>Purchaser asked for age?:</u>	Yes
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Young Adult
<u>Type of Tobacco Asked:</u>	Cigarettes
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	Participant attempted buying a pack of cigarettes behind the counter. No sale was made.

<u>Establishment:</u>	Sudbury Farms
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Grocery Store
<u>Time:</u>	1:36 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Young Adult
<u>Type of tobacco asked for:</u>	Marlboro Reds
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy of cigarettes. No sale was made.

<u>Establishment:</u>	7-Eleven #36044H, 173 Chestnut St.
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Convenience Store
<u>Time:</u>	2:00 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Adult
<u>Type of tobacco asked for:</u>	JUUL pods
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The underage purchaser attempted to buy a 4 pack of JUUL pods. No sale was made. A female clerk came out of establishment and gave a 'thumbs up' to the vehicle after the check was completed.

<u>Establishment:</u>	Needham Heights Auto. Shell, 875 Highland Ave
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Gas Mini-Mart
<u>Time:</u>	1:33 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Adult
<u>Type of tobacco asked for:</u>	Marlboro Reds
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy Marlboros, no sale made.

<u>Establishment:</u>	Speedway #2472
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Gas Mini-Mart
<u>Time:</u>	1:18 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked for age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Adult
<u>Type of tobacco asked for:</u>	JUUL Pod/Blu E-cigarette Original
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy JUUL Pods but they were sold out. The purchaser then asked for the Blu e-cigarette. No sale was made. The over 21 y.o. participant had her ID scanned.

<u>Establishment:</u>	Fernandes Mini-Mart
<u>Type of Establishment:</u>	Chain
<u>Style of Establishment:</u>	Gas Mini-Mart
<u>Time:</u>	1:06 pm
<u>Purchaser asked for ID?:</u>	Yes
<u>Purchaser asked age?:</u>	No
<u>Sex of Clerk:</u>	Male
<u>Age of Clerk:</u>	Young Adult
<u>Type of tobacco asked for:</u>	JUUL/Blu E-Cigarette
<u>Outcome:</u>	No Sale Made
<u>Notes:</u>	The purchaser attempted a buy JUUL Pods which were not available. They also asked for Blu e-cigarettes. No sale was made.



Great Plain Ave

Dedham Ave

135

First Parish In Needham

Farmhouse/Hearth Enclosure

CVS
Beauty supplies & home health items

CVS Dumpsters

Proposed Areas to Move

Tony's suggested area

Great Plain Ave

Hearth Pizzeria

Needham Psychotherapy Assoc

Harvey's Ace Hardware
Source for tools & supplies

Needham Bowlaway

Art Emporium

Chromasonic TV

Middlesex Savings Bank

Chestnut St

Chestnut St

Great Plain Ave

Google



NEEDHAM PUBLIC HEALTH



May 3, 2019

Ms. Yoko Fenelus
CVS Pharmacy Store #674
980 Great Plain Avenue
Needham, MA 02492

RE: Trash Management and Significant Rodent Infestation

Dear Ms. Yoko Fenelus,

There is a significant and ongoing rodent infestation in the Chestnut Street Parking Lot. The primary cause of the sustained infestation is the presence of unsecured food waste in the Chestnut Street Parking Lot and proximity of harborage areas in both the Chestnut Street Parking Lot and in the Needham Children's Center playground/play area. This rodent infestation is a serious threat to the public's health; this threat to the public's health must be removed, and systems and processes must be implemented so as to prevent future pest infestations and other public health threats from food waste.

You and the staff of the Great Plain Avenue CVS Pharmacy have worked closely with Assistant Public Health Director Tara Gurge and Environmental Health Agent Diana Acosta to remove the conditions (in your case, harborage areas) which led to the rodent infestation, and your contracted pest management company has also participated in efforts to eliminate the infestation. I appreciate the effort of you and your staff, and the cooperative spirit with which you have approached this challenging situation.

Yet to date those efforts have been largely unsuccessful and continued evidence of rodent infestation has been observed on a regular basis (as recently as one day prior to this letter).

As you may be aware, the Needham Board of Health is charged by the Massachusetts General Court to protect the public's health under its authority to make reasonable health regulations¹ and to "examine all nuisances, sources of filth and causes of sickness"² and further to "destroy, remove or prevent [nuisances, sources of filth and causes of sickness]".³ Further, it is a long settled principle of law that protecting the health, safety and welfare of residents is squarely within the police powers of a municipality.⁴

¹ M.G.L. ch. 111, s.31, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section31>

² M.G.L. ch. 111, s.122, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section122>

³ Ibid.

⁴ Please see *Ralston v. Commissioner of Agriculture*, 334 Mass. 51, 57 (1956); *Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 138 (1949); *Commonwealth v. Moore*, 214 Mass. 19, 24 (1913).

It is under the charge to destroy, remove or prevent nuisances, sources of filth and causes of sickness and acting with the Board of Health's authority as its designated agent that I make the following orders:

- Instruct your contracted pest management company to participate in weekly coordination meetings with the Needham Public Health Division and with the other pest management companies working to address the rodent infestation in the Chestnut Street Parking Lot. These meetings will occur on Wednesdays at 12 noon⁵ beginning on May 8, 2019 and continuing until such time as the rodent infestation has been successfully controlled;⁶ and
- Ensure that the area surrounding your dumpsters is **always** free and clear of any potential harborage materials including wooden pallets, boxes, and stacked cardboard. To accommodate this condition, you may have to increase the frequency of the pickup of both trash and cardboard recycling. It is **never** acceptable for any of the aforementioned items (wooden pallets, boxes, stacked cardboard, etc.) to be unsecured outside of a dumpster for a period longer than the 20 to 30 minutes it should take to load or unload delivery trucks. Likewise, if the amount of trash or cardboard is such that it exceeds the dumpster capacity, you **must** arrange for a special pickup from your hauler within a four-hour period since it is never acceptable for trash or potential harborage materials to rest unsecured.

The first order will remain in effect until the rodent infestation is resolved so that it is no longer a source of filth and does not attract pests that spread sickness; this determination will be made by the Needham Public Health Division. The second order is an ongoing concern that will be subject to frequent review by Public Health Division staff members; it is not time limited because maintaining dumpster areas free from harborage materials is an essential element of maintaining a sanitary and pest free environment.

It is my sincere hope that these efforts will prove successful at remedying this threat to the public's health. If these efforts do not quickly and dramatically reduce the existing rodent infestation, I will order additional measures to preserve the public's health, up to or including moving the dumpsters containing trash and potential harborage materials further away from the property line.

The Town of Needham wants to support responsible business owners; working through Director of Economic Development Devra Bailin, Needham is currently investigating options for the consolidation and management of trash, food waste, and recycling in the Chestnut Street Parking Lot area. I encourage you to contact her at dbailin@needhamma.gov or at 781-455-7550 x213 to discuss whether her efforts can help to assist or support your business.

If you have any questions about this letter or you wish to discuss this subject in more detail, I am happy to meet with you. I may be reached by calling (781) 455-7940. Please know that you have the right to challenge this order letter at a full public hearing in front of the Needham Board of Health. Any affected party has the right to appear at such a hearing, as well as the right to inspect or obtain copies of inspection reports, investigations, order letters, and other documentary

⁵ Or at dates and times to be determined by Assistant Public Health Director Tara Gurge.

⁶ The determination of when the infestation is successfully controlled will be made by the Needham Public Health Division, based upon verbal feedback and written reports submitted by all the pest management companies working in the area.

information in the possession of the Needham Public Health Division. Such a hearing will be formally posted on the Town's website and will be open to the general public. Please notify me in writing of your intent to challenge this order letter at a public hearing. This office must receive your written request within seven days of receipt of this letter.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Timothy Muir McDonald".

Timothy Muir McDonald
Director of Health & Human Services (designated Agent of the Needham Board of Health)
Town of Needham

cc: Kate Fitzpatrick, Town Manager
Christopher Coleman, Assistant Town Manager
David Tobin, Town Counsel
Tara Gurge, Assistant Public Health Director
Diana Acosta, Environmental Health Agent
Needham Board of Health
Needham Planning Board
Lee Newman, Director of Planning & Community Development
Devra Bailin, Economic Development Director
Gary Simon, Landlord
Grant Gerard, Property Manager
Griffan Mullan, CVS District Manager



NEEDHAM PUBLIC HEALTH



May 3, 2019

Ms. Dora Tavel-Sanchez Luz & Mr. Gabriel Sanchez Luz
Farmhouse Restaurant
970 Great Plain Avenue
Needham, MA 02492

RE: Trash Management and Significant Rodent Infestation

Dear Ms. Dora Tavel-Sanchez Luz and Mr. Gabriel Sanchez Luz,

There is a significant and ongoing rodent infestation in the immediate vicinity of the shared Hearth/Farmhouse Dumpster near the Chestnut Street Parking Lot. The primary cause of the sustained infestation is the presence of unsecured food waste in the Chestnut Street Parking Lot and the proximity of harborage areas in both the Chestnut Street Parking Lot and in the Needham Children's Center playground/play area. This rodent infestation is a serious threat to the public's health; this threat to the public's health must be removed, and systems and processes must be implemented so as to prevent future pest infestations and other public health threats resulting from unsecured food waste and nearby harborage areas.

You and the staff of your restaurant have worked closely with Assistant Public Health Director Tara Gurge and Environmental Health Agent Diana Acosta to remove the conditions (unsecured food waste and harborage areas) which led to the rodent infestation, and your contracted pest management company has also participated in efforts to eliminate the infestation. I appreciate the effort of you and your staff, and the cooperative spirit with which you have approached this challenging situation.

Yet to date those efforts have been largely unsuccessful and continued evidence of rodent infestation has been observed on a regular basis (as recently as one day prior to this letter).

As you may be aware, the Needham Board of Health is charged by the Massachusetts General Court to protect the public's health under its authority to make reasonable health regulations¹ and to "examine all nuisances, sources of filth and causes of sickness"² and further to "destroy, remove or prevent [nuisances, sources of filth and causes of sickness]".³ Further, it is a long settled principle of law that protecting the health, safety and welfare of residents is squarely

¹ M.G.L. ch. 111, s.31, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section31>

² M.G.L. ch. 111, s.122, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section122>

³ Ibid.

within the police powers of a municipality.⁴

It is under the charge to destroy, remove or prevent nuisances, sources of filth and causes of sickness and acting with the Board of Health's authority as its designated agent that I make the following orders:

- Increase, with immediate effect,⁵ the frequency of the pickup of trash and food waste so that it occurs daily;⁶
- Arrange for the pickup of trash in such a way so as to minimize the time in which your dumpsters are at or near capacity.⁷ The Special Permit from the Needham Planning Board under which your restaurant operates specifies that trash pickup may only occur between 7:00 a.m. and 6:00 p.m. on weekdays and from 9:00 a.m. to 1:00 p.m. on weekends and holidays. Using the authority granted to the Board of Health under M.G.L. ch. 111, s.122 and recognizing that the current rodent infestation is a source of filth and a potential cause of sickness, I formally exempt you and your contracted trash hauler from those specific time requirements;
- Ensure that the area surrounding your dumpsters is clean and sanitary at all times. It is **never** acceptable for any food waste, general trash, packaging materials, or other debris to exist unsecured outside of a dumpster. This requirement may mean that your staff members must exercise additional care when disposing of trash, and it may also mean that you and your staff may need to inspect the dumpster periodically during the day to make sure that the dumpster area is clean and sanitary. If the amount of trash, food waste, or cardboard is such that it exceeds the dumpster capacity, you **must** arrange for a special pickup from your hauler within a four-hour period since it is never acceptable for trash, food waste, or potential harborage materials to rest unsecured; and
- Instruct your contracted pest management company to participate in weekly coordination meetings with the Needham Public Health Division and with the other pest management companies working to address the rodent infestation in the immediate vicinity of the shared Hearth/Farmhouse Dumpster near the Chestnut Street Parking Lot. These meetings will occur on Wednesdays at 12 noon⁸ beginning on May 8, 2019 and continuing until such time as the rodent infestation has been successfully controlled.⁹

These orders will remain in effect until the rodent infestation is resolved so that it is no longer a source of filth and does not attract pests that spread sickness; this determination will be made by the Needham Public Health Division. After such time, my Department will work with you and your staff to determine an appropriate frequency and timing for the future pickup of food waste that will ensure that the dumpsters and the dumpster enclosure area are operated and maintained in a sanitary manner.

⁴ Please see *Ralston v. Commissioner of Agriculture*, 334 Mass. 51, 57 (1956); *Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 138 (1949); *Commonwealth v. Moore*, 214 Mass. 19, 24 (1913).

⁵ Defined here as within 48 hours of receipt of this correspondence.

⁶ Daily is defined such that trash pickup must occur less than 6 hours after your restaurant has closed and all staff members have departed.

⁷ That means that a dumpster full of food waste should be picked up by a trash hauler as soon as possible following the completion of meal service, and that under no circumstance should a dumpster full of food waste sit for 6 or more hours before it is picked up.

⁸ Or at dates and times to be determined by Assistant Public Health Director Tara Gurge.

⁹ The determination of when the infestation is successfully controlled will be made by the Needham Public Health Division, based upon verbal feedback and written reports submitted by all the pest management companies working in the area.

It is my sincere hope that these efforts will prove successful at remedying this threat to the public's health. If these efforts do not quickly and dramatically reduce the existing rodent infestation, I will order additional measures to preserve the public's health, up to or including moving the dumpsters containing food waste further away from the property line.

The Town of Needham wants to support responsible business owners; working through Director of Economic Development Devra Bailin, Needham is currently investigating options for the consolidation and management of trash and food waste in the Chestnut Street Parking Lot area. I encourage you to contact her at dbailin@needhamma.gov or at 781-455-7550 x213 to discuss whether her efforts can help to assist or support your business.

If you have any questions about this letter or you wish to discuss this subject in more detail, I am happy to meet with you. I may be reached by calling (781) 455-7940. Please know that you have the right to challenge this order letter at a full public hearing in front of the Needham Board of Health. Any affected party has the right to appear at such a hearing, as well as the right to inspect or obtain copies of inspection reports, investigations, order letters, and other documentary information in the possession of the Needham Public Health Division. Such a hearing will be formally posted on the Town's website and will be open to the general public. Please notify me in writing of your intent to challenge this order letter at a public hearing. This office must receive your written request within seven days of receipt of this letter.

Thank you for your cooperation in this matter.

Sincerely,



Timothy Muir McDonald
Director of Health & Human Services (designated Agent of the Needham Board of Health)
Town of Needham

cc: Kate Fitzpatrick, Town Manager
Christopher Coleman, Assistant Town Manager
David Tobin, Town Counsel
Tara Gurge, Assistant Public Health Director
Diana Acosta, Environmental Health Agent
Needham Board of Health
Needham Planning Board
Lee Newman, Director of Planning & Community Development
Devra Bailin, Economic Development Director
Juan Munoz, Manager of Farmhouse Restaurant
Gary Simon, Landlord
Grant Gerard, Property Manager



NEEDHAM PUBLIC HEALTH



May 3, 2019

Mr. Ivan Millain-Pulecio
Hearth Pizzeria
974 Great Plain Avenue
Needham, MA 02492

RE: Trash Management and Significant Rodent Infestation

Dear Mr. Ivan Millain-Pulecio,

There is a significant and ongoing rodent infestation in the immediate vicinity of the shared Hearth/Farmhouse Dumpster near the Chestnut Street Parking Lot. The primary cause of the sustained infestation is the presence of unsecured food waste in the Chestnut Street Parking Lot and the proximity of harborage areas in both the Chestnut Street Parking Lot and in the Needham Children's Center playground/play area. This rodent infestation is a serious threat to the public's health; this threat to the public's health must be removed, and systems and processes must be implemented so as to prevent future pest infestations and other public health threats resulting from unsecured food waste and nearby harborage areas.

You and the staff of your restaurant have worked closely with Assistant Public Health Director Tara Gurge and Environmental Health Agent Diana Acosta to remove the conditions (unsecured food waste and harborage areas) which led to the rodent infestation, and your contracted pest management company has also participated in efforts to eliminate the infestation. I appreciate the effort of you and your staff, and the cooperative spirit with which you have approached this challenging situation.

Yet to date those efforts have been largely unsuccessful and continued evidence of rodent infestation has been observed on a regular basis (as recently as one day prior to this letter).

As you may be aware, the Needham Board of Health is charged by the Massachusetts General Court to protect the public's health under its authority to make reasonable health regulations¹ and to "examine all nuisances, sources of filth and causes of sickness"² and further to "destroy, remove or prevent [nuisances, sources of filth and causes of sickness]".³ Further, it is a long settled principle of law that protecting the health, safety and welfare of residents is squarely within the police powers of a municipality.⁴

¹ M.G.L. ch. 111, s.31, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section31>

² M.G.L. ch. 111, s.122, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section122>

³ Ibid.

⁴ Please see *Ralston v. Commissioner of Agriculture*, 334 Mass. 51, 57 (1956); *Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 138 (1949); *Commonwealth v. Moore*, 214 Mass. 19, 24 (1913).

It is under the charge to destroy, remove or prevent nuisances, sources of filth and causes of sickness and acting with the Board of Health's authority as its designated agent that I make the following orders:

- Increase, with immediate effect,⁵ the frequency of the pickup of trash and food waste so that it occurs daily;⁶
- Arrange for the pickup of trash in such a way so as to minimize the time in which your dumpsters are at or near capacity.⁷ The Special Permit from the Needham Planning Board under which your restaurant operates specifies that trash pickup may only occur between 7:00 a.m. and 6:00 p.m. on weekdays and from 9:00 a.m. to 1:00 p.m. on weekends and holidays. Using the authority granted to the Board of Health under M.G.L. ch. 111, s.122 and recognizing that the current rodent infestation is a source of filth and a potential cause of sickness, I formally exempt you and your contracted trash hauler from those specific time requirements;
- Ensure that the area surrounding your dumpsters is clean and sanitary at all times. It is **never** acceptable for any food waste, general trash, packaging materials, or other debris to exist unsecured outside of a dumpster. This requirement may mean that your staff members must exercise additional care when disposing of trash, and it may also mean that you and your staff may need to inspect the dumpster periodically during the day to make sure that the dumpster area is clean and sanitary. If the amount of trash, food waste, or cardboard is such that it exceeds the dumpster capacity, you **must** arrange for a special pickup from your hauler within a four-hour period since it is never acceptable for trash, food waste, or potential harborage materials to rest unsecured; and
- Instruct your contracted pest management company to participate in weekly coordination meetings with the Needham Public Health Division and with the other pest management companies working to address the rodent infestation in the immediate vicinity of the shared Hearth/Farmhouse Dumpster near the Chestnut Street Parking Lot. These meetings will occur on Wednesdays at 12 noon⁸ beginning on May 8, 2019 and continuing until such time as the rodent infestation has been successfully controlled.⁹

These orders will remain in effect until the rodent infestation is resolved so that it is no longer a source of filth and does not attract pests that spread sickness; this determination will be made by the Needham Public Health Division. After such time, my Department will work with you and your staff to determine an appropriate frequency and timing for the future pickup of food waste that will ensure that the dumpsters and the dumpster enclosure area are operated and maintained in a sanitary manner.

It is my sincere hope that these efforts will prove successful at remedying this threat to the public's health. If these efforts do not quickly and dramatically reduce the existing rodent infestation, I will order additional measures to preserve the public's health, up to or including

⁵ Defined here as within 48 hours of receipt of this correspondence.

⁶ Daily is defined such that trash pickup must occur less than 6 hours after your restaurant has closed and all staff members have departed.

⁷ That means that a dumpster full of food waste should be picked up by a trash hauler as soon as possible following the completion of meal service, and that under no circumstance should a dumpster full of food waste sit for 6 or more hours before it is picked up.

⁸ Or at dates and times to be determined by Assistant Public Health Director Tara Gurge.

⁹ The determination of when the infestation is successfully controlled will be made by the Needham Public Health Division, based upon verbal feedback and written reports submitted by all the pest management companies working in the area.

moving the dumpsters containing food waste further away from the property line.

The Town of Needham wants to support responsible business owners; working through Director of Economic Development Devra Bailin, Needham is currently investigating options for the consolidation and management of trash and food waste in the Chestnut Street Parking Lot area. I encourage you to contact her at dbailin@needhamma.gov or at 781-455-7550 x213 to discuss whether her efforts can help to assist or support your business.

If you have any questions about this letter or you wish to discuss this subject in more detail, I am happy to meet with you. I may be reached by calling (781) 455-7940. Please know that you have the right to challenge this order letter at a full public hearing in front of the Needham Board of Health. Any affected party has the right to appear at such a hearing, as well as the right to inspect or obtain copies of inspection reports, investigations, order letters, and other documentary information in the possession of the Needham Public Health Division. Such a hearing will be formally posted on the Town's website and will be open to the general public. Please notify me in writing of your intent to challenge this order letter at a public hearing. This office must receive your written request within seven days of receipt of this letter.

Thank you for your cooperation in this matter.

Sincerely,



Timothy Muir McDonald
Director of Health & Human Services (designated Agent of the Needham Board of Health)
Town of Needham

cc: Kate Fitzpatrick, Town Manager
Christopher Coleman, Assistant Town Manager
David Tobin, Town Counsel
Tara Gurge, Assistant Public Health Director
Diana Acosta, Environmental Health Agent
Needham Board of Health
Needham Planning Board
Lee Newman, Director of Planning & Community Development
Devra Bailin, Economic Development Director
Gary Simon, Landlord
Grant Gerard, Property Manager



NEEDHAM PUBLIC HEALTH



May 3, 2019

Mr. Vinood Kapoor and Mr. Sorabh Kapoor
Masala Art
990 Great Plain Avenue
Needham, MA 02492

RE: Trash Management and Significant Rodent Infestation

Dear Mr. Vinood Kapoor and Mr. Sorabh Kapoor,

There is a significant and ongoing rodent infestation in the Chestnut Street Parking Lot. The primary cause of the sustained infestation is the presence of unsecured food waste in the Chestnut Street Parking Lot and the proximity of harborage areas in both the Chestnut Street Parking Lot and in the Needham Children's Center playground/play area. This rodent infestation is a serious threat to the public's health; this threat to the public's health must be removed, and systems and processes must be implemented so as to prevent future pest infestations and other public health threats resulting from unsecured food waste and nearby harborage areas.

You and the staff of your restaurant have worked closely with Assistant Public Health Director Tara Gurge and Environmental Health Agent Diana Acosta to remove the conditions (unsecured food waste and harborage areas) which led to the rodent infestation, and your contracted pest management company has also participated in efforts to eliminate the infestation. I appreciate the effort of you and your staff, and the cooperative spirit with which you have approached this challenging situation.

Yet to date those efforts have been largely unsuccessful and continued evidence of rodent infestation has been observed on a regular basis (as recently as one day prior to this letter).

As you may be aware, the Needham Board of Health is charged by the Massachusetts General Court to protect the public's health under its authority to make reasonable health regulations¹ and to "examine all nuisances, sources of filth and causes of sickness"² and further to "destroy, remove or prevent [nuisances, sources of filth and causes of sickness]".³ Further, it is a long settled principle of law that protecting the health, safety and welfare of residents is squarely within the police powers of a municipality.⁴

¹ M.G.L. ch. 111, s.31, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section31>

² M.G.L. ch. 111, s.122, available at: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section122>

³ Ibid.

⁴ Please see *Ralston v. Commissioner of Agriculture*, 334 Mass. 51, 57 (1956); *Druzik v. Board of Health of Haverhill*, 324 Mass. 129, 138 (1949); *Commonwealth v. Moore*, 214 Mass. 19, 24 (1913).

It is under the charge to destroy, remove or prevent nuisances, sources of filth and causes of sickness and acting with the Board of Health's authority as its designated agent that I make the following orders:

- Increase, with immediate effect,⁵ the frequency of the pickup of trash and food waste so that it occurs daily;^{6,7}
- Arrange for the pickup of trash in such a way so as to minimize the time in which your dumpsters are at or near capacity.⁸ The Special Permit from the Needham Planning Board under which your restaurant operates specifies that trash pickup may only occur between 7:00 a.m. and 6:00 p.m. on weekdays and from 9:00 a.m. to 1:00 p.m. on weekends and holidays. Using the authority granted to the Board of Health under M.G.L. ch. 111, s.122 and recognizing that the current rodent infestation is a source of filth and a potential cause of sickness, I formally exempt you and your contracted trash hauler from those specific time requirements;
- Ensure that the area surrounding your dumpsters is clean and sanitary at all times. It is **never** acceptable for any food waste, general trash, packaging materials, or other debris to exist unsecured outside of a dumpster. This requirement may mean that your staff members must exercise additional care when disposing of trash, and it may also mean that you and your staff may need to inspect the dumpster periodically during the day to make sure that the dumpster area is clean and sanitary. If the amount of trash, food waste, or cardboard is such that it exceeds the dumpster capacity, you **must** arrange for a special pickup from your hauler within a four-hour period since it is never acceptable for trash, food waste, or potential harborage materials to rest unsecured; and
- Instruct your contracted pest management company to participate in weekly coordination meetings with the Needham Public Health Division and with the other pest management companies working to address the rodent infestation in the Chestnut Street Parking Lot. These meetings will occur on Wednesdays at 12 noon⁹ beginning on May 8, 2019 and continuing until such time as the rodent infestation has been successfully controlled.¹⁰

These orders will remain in effect until the rodent infestation is resolved so that it is no longer a source of filth and does not attract pests that spread sickness; this determination will be made by the Needham Public Health Division. After such time, my Department will work with you and your staff to determine an appropriate frequency and timing for the future pickup of food waste that will ensure that the dumpsters and the dumpster enclosure area are operated and maintained in a sanitary manner.

It is my sincere hope that these efforts will prove successful at remedying this threat to the public's health. If these efforts do not quickly and dramatically reduce the existing rodent infestation, I will order additional measures to preserve the public's health, up to or including

⁵ Defined here as within 48 hours of receipt of this correspondence.

⁶ Daily is defined such that trash pickup must occur less than 6 hours after your restaurant has closed and all staff members have departed.

⁷ It is understood that Masala Art currently has pickup six days per week, but this must increase to daily pickups except for those weeks when the restaurant and any associated catering is closed in observance of a holiday.

⁸ That means that a dumpster full of food waste should be picked up by a trash hauler as soon as possible following the completion of meal service, and that under no circumstance should a dumpster full of food waste sit for 6 or more hours before it is picked up.

⁹ Or at dates and times to be determined by Assistant Public Health Director Tara Gurge.

¹⁰ The determination of when the infestation is successfully controlled will be made by the Needham Public Health Division, based upon verbal feedback and written reports submitted by all the pest management companies working in the area.

moving the dumpsters containing food waste further away from the property line.

If you have any questions about this letter or you wish to discuss this subject in more detail, I am happy to meet with you. I may be reached by calling (781) 455-7940. Please know that you have the right to challenge this order letter at a full public hearing in front of the Needham Board of Health. Any affected party has the right to appear at such a hearing, as well as the right to inspect or obtain copies of inspection reports, investigations, order letters, and other documentary information in the possession of the Needham Public Health Division. Such a hearing will be formally posted on the Town's website and will be open to the general public. Please notify me in writing of your intent to challenge this order letter at a public hearing. This office must receive your written request within seven days of receipt of this letter.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Timothy Muir McDonald".

Timothy Muir McDonald
Director of Health & Human Services (designated Agent of the Needham Board of Health)
Town of Needham

cc: Kate Fitzpatrick, Town Manager
Christopher Coleman, Assistant Town Manager
David Tobin, Town Counsel
Tara Gurge, Assistant Public Health Director
Diana Acosta, Environmental Health Agent
Needham Board of Health
Needham Planning Board
Lee Newman, Director of Planning & Community Development
Devra Bailin, Economic Development Director

What you should know about student vaping

By Stefan Geller

Posted Apr 17, 2019 at 4:31 PM

Updated Apr 17, 2019 at 4:31 PM

A forum on the dangers of e-cigarettes was held on April 4 at the Rosemary Recreation Complex, hosted by the Substance Prevention Alliance of Needham, Needham Parents Care and Beth Israel Deaconess Hospital.

The presentation, titled, “Juuling and Schooling,” was given by Dr. Jonathan Winickoff, a pediatrician at Massachusetts General Hospital for Children and a professor of pediatrics at Harvard Medical School.

Here are a few important takeaways:

What exactly is vaping?

Vaping is the act of inhaling and exhaling vapor- typically containing nicotine- via electronic, battery-powered devices commonly known as “e-cigarettes,” “vape pens,” “tanks” and “mods.”

The devices are also referred to by brand name, such as JUUL, one of the largest distributors of vaping devices in the country.

Vaping products are sold in nearly 8,000 flavors, such as mango, mint and cinnamon. They can be found at gas stations, pharmacies and package stores. Some devices can also be used to consume marijuana vapor.

Massachusetts in 2018 passed a law making the age to purchase vaping products 21 years old.

Growing prevalence

According to a 2016 MetroWest Adolescent Health Survey, 26 percent of high school students in the MetroWest area said they had tried using e-cigarettes and 16 percent reported using them in a typical month.

Winickoff said that one of the major reasons he believes kids are getting into vaping, outside of peer pressure, is the flavoring.

What's in them?

According to Winickoff's presentation, e-cigarette solutions (otherwise known as e-juice) contain:

- Humectant (propylene glycol and glycerin)
- Flavoring
- Nicotine (which can be present even when listed as 0 mg/ml)
- Toxicants
- Carcinogens
- Cytotoxic metallic nano-particles (from the coil heating element)
- Silicates

Dangers

The main danger that Winickoff said vaping poses is nicotine addiction.

According to Winickoff, only 0.5 percent of vaping solutions in the U.S. market truly contain no nicotine, which he said has the strongest effects on kids. And to make matters worse a single JUUL pod contains as much nicotine as a pack of cigarettes.

"The adolescent brain is uniquely vulnerable to nicotine addiction. They can become addicted more quickly and at lower levels of use," he said. "If kids are vaping, they're vaping nicotine."

In addition to nicotine addiction, Winickoff said e-cigarette use can lead to asthma attacks, mood disorders and attention problems.

However, because the trend of vaping is relatively new, there have been no studies linking it to cancer. Still, Winickoff said parents should be concerned if their kids are using them.

“If we have carcinogens and kids are inhaling these ultra fine particles deep into their lungs, it’s just a matter of time before that starts to yield cancer,” he said.

Recommendations

Winickoff said that because nicotine addiction is such a difficult thing to fight, primary prevention is critical to combat it.

“If someone is trying [e-cigarettes] you have a very tight window to get them off of it before they lose total control. And that’s why it’s an emergency,” he said.

For parents, Winickoff recommended asking less pointed questions when addressing the topic with kids in- such as, “do any of your friends JUUL?” or “have you ever tried it?” - in order to make them more comfortable talking about it.

Additionally, he suggested discussing the topic as early as possible, setting clear expectations and consequences, being more careful lending kids money and getting help early if you believe they have become addicted.

Times 4/18/19

Mathews, Partridge elected to Board of Health

Low turnout for annual town election

By Stefan Geller
sgeller@wickedlocal.com

Needham residents elected Christina Mathews and Robert Partridge to the Board of Health on Tuesday, April 9, to serve for the next three years.

"I'm feeling great. I'm a relative newcomer to Needham so I wasn't sure what to expect, but in the last two years I've become very involved

in the town," Mathews said. "I'm really excited to be a part of the board and to work on the issues."

Mathews is a health communications consultant and has worked as a health policy analyst for the Rhode Island Department of Health. Partridge is an emergency physician at Emerson Hospital and an adjunct associate professor of emergency medicine at Brown Medical School.

Mathews and Partridge defeated Matthew Rubin for two

See ELECTION, C1

featured a contested race for the Select Board.

Mathews received 925, Partridge received 681 votes and Rubin received 514 votes. Winston received 552 votes versus Ecsedy's 502 and Kerr received 630 votes versus Handel's 485.

"I'm slightly disappointed, I was looking forward to helping influence the public health decisions Needham is facing," Rubin said. "I think it was a good campaign and a good election."

Rubin added that he plans on running for public election again in the future, though he hasn't decided yet what it will be.

"It's still a question mark, Board of Health might be the thing I run for next, it might be a different position, but it was fun to get involved," he said. "This won't be the last they hear about me."

Mathews and Partridge said that the biggest health issues in the town they aim to address going into their terms are to reducing vaping among teens and fighting substance abuse, respectively.

ELECTION

From Page A1

of the three open seats in the race, earning each of them their first term. Rubin is a tech entrepreneur and proactive mental health advocate, which he made the primary goal of his campaign.

"My message to [Rubin] would be to congratulate him on a hard fought race, and if he has ideas and would like to be involved in working on public health we would certainly welcome them," Partridge said.

In the town's two other contested races, residents elected Stanley Winston as the town's Assessor over David Ecsedy, and Anna Giraldo Kerr as a Needham Public Library Trustee over Barbara Handel.

According to the town website, voter turnout for this year's election was 6.6 percent, with 1,426 votes cast out of 21,525 eligible voters. This is a sharp decrease from last year's turnout of 13.6 percent, though the 2018 election



Needham residents elected Christina Mathews and Robert Partridge to the Board of Health on Tuesday. [COURTESY PHOTOS]