

CHAPTER 4 TOBACCO CONTROL

SECTION 1 RESTRICTING THE SALE OF TOBACCO PRODUCTS: PURPOSE

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

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

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

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin (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/);

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

Whereas many non-cigarette tobacco products, such as cigars and cigarillos can be sold in a single ‘dose;’ enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth (CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.);

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

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% (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);

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (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 quit and high prices deter youth from starting. 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 (¹ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.) and (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://dceps.nih.gov/TCRB/monographs/>);

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

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

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

SECTION 2 DEFINITIONS

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

4.2.001 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.

4.2.002 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.

4.2.003 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.

4.2.004 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.

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

4.2.006 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.

4.2.007 DISTINGUISHABLE: Perceivable by either the sense of smell or taste.

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

4.2.009 ELECTRONIC CIGARETTE: Any electronic device composed of a mouthpiece, heating element, battery and /or electronic circuits that provides vapor of liquids, regardless of nicotine content, or relies on vaporization of any solid or liquid substance, regardless of nicotine content. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. An electronic cigarette includes any component or part of an electronic cigarette, regardless of nicotine content, that rely on vaporization or aerosolization, including but not limited to, pods, vape juice containers and cartridges.

4.2.010 EMPLOYEE: Any individual who performs services for an employer.

4.2.011 EMPLOYER: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Billerica or any agency thereof, which uses the services of one (1) or more employees.

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

4.2.013 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.

4.2.014 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 subject to the

provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

4.2.015 MINIMUS LEGAL SALES AGE (MLSA): The age an individual must be before that individual can be sold a tobacco product in the Town of Billerica.

4.2.016 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.

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

4.2.018 PERMIT HOLDER: Any person engaged in the sale or distribution of tobacco products directly to consumers 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.

4.2.019 PERSON: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

4.2.020 RETAIL TOBACCO STORE: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Billerica Board of Health.

4.2.021 SELF SERVICE DISPLAY: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

4.2.022 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.

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

4.2.024 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, Section 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”.

4.2.025 TOBACCO AND/OR 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.

4.2.026 VENDING MACHINE: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product.

SECTION 3 TOBACCO PRODUCT SALES TO PERSONS UNDER THE AGE OF 21 PROHIBITED

4.3.001 No person shall sell or provide a tobacco product, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in the Town of Billerica is 21.

4.3.002 REQUIRED SIGNAGE

4.3.002(1) 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 Billerica Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (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.

4.3.002(2) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Billerica Board of Health that discloses current referral information about smoking cessation.

4.3.002(3) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post a sign stating that “The sale of tobacco products to someone under 21 years of age is prohibited.” The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be no smaller than 8.5” by 11” 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. These notices 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.

4.3.003 IDENTIFICATION: 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 21 years old or older. Verification is required for any person under the age of 40.

4.3.004 All retail sales of tobacco products must be face-to-face between the seller and the buyer (except for the purchase of tobacco from vending machines) and all retail sales of tobacco products must occur at the permitted location.

SECTION 4 TOBACCO PRODUCT SALES PERMIT

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

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

4.4.003 Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco Product Sales Permit can be issued.

4.4.004 The fee for a Tobacco Product Sales Permit shall be in accordance with the most current Board of Health fee schedule. All such permits shall be renewed annually by June 30th of every year.

4.4.005 A separate permit is required for each location where a retail establishment is selling tobacco products.

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

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

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

4.4.009 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.

4.4.010 Issuance and holding of a Tobacco Product Sales Permit shall be conditioned on an applicant's on-going compliance with current Massachusetts Department of Revenue requirements and policies including, but not limited to, minimum retail prices of tobacco products.

4.4.011 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.

4.4.012 Limiting Number of Tobacco Product Sales Permits Issued in the Town of Billerica. As of April 1, 2013, the Billerica Board of Health shall not issue a Tobacco Product Sales Permit to a first-time permit applicant with a new business. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his/her permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 60 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and failure to meet this deadline will result in the Buyer being treated as a first-time permit applicant.

4.4.13 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.

4.4.014 There shall be no more than three (3) Tobacco Sales Permits issued to Adult-Only Retail Tobacco Stores in Billerica as of July 1, 2019. No permit renewal by an Adult-Only Retail Tobacco Store 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. New Adult-Only Retail Tobacco Store applicants for permits who are applying at a time when the maximum number of permits dedicated for Adult-Only Retail Tobacco Stores have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis as issued permits to Retail Tobacco Stores are either not renewed, revoked, or are returned to the Board of Health. Applicants who purchase or acquire an existing Adult-Only Retail Tobacco Store 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 operate as an Adult-Only Retail Tobacco Store, as defined herein.

SECTION 5 CIGAR SALES REGULATED:

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

4.5.002 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.

4.5.003 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 Billerica.

SECTION 6 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.

SECTION 7 PROHIBITION OF THE SALE OF BLUNT WRAPS

No person or entity shall sell or distribute blunt wraps within Billerica.

SECTION 8 FREE DISTRIBUTION AND COUPON REDEMPTION

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

SECTION 9 OUT-OF-PACKAGE SALES

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. Pursuant to 940 CMR 21.04 (1) (b), no person shall break or otherwise open any tobacco product's package to sell or distribute any number of unpackaged or repackaged tobacco product that is smaller than the smallest package distributed by the manufacturer for individual consumer use. Pursuant to 940 CMR 21.05, no person shall sell or distribute nicotine in a liquid or gel substance in Billerica 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.

SECTION 10 SELF SERVICE DISPLAYS

4.10.001 All self-service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

4.10.001(a) EXEMPTION: Self-service displays that are located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.

SECTION 11 TOBACCO VENDING MACHINES

4.11.001 All tobacco product vending machines are prohibited.

4.11.001(a) EXEMPTION: Vending machines are permitted if equipped with a lock out device, in an establishment with a valid pouring liquor license, and located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time. A lock-out device locks out sales from the vending machine unless a release mechanism is triggered by an 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 employees.

SECTION 12 NON-RESIDENTIAL ROLL-YOUR-OWN (RYO) MACHINES

All Non-Residential Roll-Your-Own (RYO) Machines are prohibited.

SECTION 13 LIMITING TOBACCO PRODUCT SALES PERMITS HELD BY HEALTH CARE INSTITUTIONS:

Only health care institutions in Billerica holding a valid tobacco sales permit as of January 1, 2013 shall be permitted to sell or cause to be sold tobacco products. For health care institutions only, a Tobacco and Nicotine Delivery Product Sales Permit is transferable for a new location. No person or entity purchasing a health care institution in Billerica is permitted to apply for a Tobacco Sales Permit, notwithstanding Section 4.4.012 of these regulations.

SECTION 14 PROHIBITION OF THE SALE OF TOBACCO PRODUCTS BY EDUCATIONAL INSTITUTIONS:

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

SECTION 15 VIOLATIONS/ENFORCEMENT/PENALTIES

15.001 It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco products. The violator shall receive:

- a) In the case of a first violation, a fine of one hundred (100) dollars;
- b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred (200) dollars and the Tobacco Product Sales Permit may be suspended for seven (7) consecutive business days.
- c) In the case of three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco and Product Sales Permit may be suspended for thirty (30) consecutive business days.
- d) In the case of more than three violations within a thirty-six (36) month period, a fine of three hundred (300) dollars and the Tobacco Product Sales Permit may be revoked.

15.002 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.

15.003 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer 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.

15.004 The Billerica Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore 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 therefore in writing. After a hearing, the Billerica Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

15.005 **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.

15.006 **Enforcement:** Enforcement of this regulation shall be by the Billerica 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 Billerica Board of Health or its designated agent(s) and the Board shall investigate.

SECTION 16 OTHER APPLICABLE LAWS

This regulation shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety and fire codes, regulations or statutes.

SECTION 17 PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

17.001 The Board of Health adopts the Massachusetts Smoke-Free Workplace Law (Massachusetts General Law Chapter 270, Sections 21 and 22) by reference and any future revisions as a local regulation.

17.002 Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is also hereby prohibited in the following locations:

- a) retail tobacco stores
- b) smoking bars
- c) outdoor spaces of restaurants

17.003 The use of e-cigarettes is prohibited wherever smoking is prohibited per Massachusetts General Laws Chapter 270, Section 22 and Section 4.17.002 of this regulation.

SECTION 18 SALE OF ELECTRONIC CIGARETTES PROHIBITED:

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

SECTION 19 THROUGH 21

Reserved for future regulations, amendments, etc.

SECTION 22 SEVERABILITY

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

Effective Date:

Amendments concerning the definition of “Electronic Cigarette” in Section 2 and the restriction on the sale of electronic cigarettes in Section 18 were enacted by the Billerica Board of Health on March 4, 2019 and shall take effect on July 1, 2019.