



BOARD OF HEALTH
Topsfield Town Offices
8 West Common Street, Topsfield, MA 01983

Minutes of February 28, 2019
7:30 PM

Board Members present were Chairman Sheryl Knutsen RN, Vice Chairman Gerald Topping PE and Board Members Vincent Guerra MD, Thomas Mannetta CE and Anthony Alley RN. Health Agent John Coulon RS and Senior Administrative Assistant/ Recording Secretary Susan Winslow were in attendance. Selectman Richard Gandt was in attendance. Representing the Tri-Town Coalition, Meredith Shaw, Nicole Gregoire Allis and Lisa Teichner were in attendance as were Masconomet Regional High School Students representing the Tri-Town Council Youth Advisory Board Emily Coughlin, Justin Crosby, Abigail Moisan, Dana Patten, Vanessa Powers, Olivia Scott. Representing the Northeast Tobacco Free Partnership, Diane Knight was in attendance. Resident Larry Fixler was in attendance, as was Boxford resident Cynthia Grandin PhD. Representing the Tri-Town Transcript, reporter Wendall Waters was in attendance.

COMMONLY USED ABBREVIATIONS:

ADA: Americans with Disabilities Act

BOH: Board of Health

BOS: Board of Selectmen

CDC: Centers for Disease Control and Prevention

CEU: Continuing Education Unit

CEMP: Comprehensive Emergency Management Plan

COIN: Community Outreach Information Network

DPH: Department of Public Health

EDS: Emergency Dispensing Site

ESHW: Estimated Seasonal High Water Table

EP: Emergency Preparedness

FDA: Food & Drug Administration

HHS: Health and Human Services

HMCC: Health & Medical Coordinating Coalition

LSAC: Local State Advisory Committee

MDPH Mass. Dept. of Public Health

MAPC: Metropolitan Area Planning Council

MAVEN: Massachusetts Virtual Epidemiologic Network

MDEP: Massachusetts Department of Environmental
Protection

MEMA: Massachusetts Emergency Management Agency

MRC: Medical Reserve Corps

NEMMC: Northeast Massachusetts Mosquito Control

PE: Professional Engineer

PHEP: Public Health Emergency Preparedness

POD: Point Of Dispensing (aka EDS)

RN: Registered Nurse

RS: Registered Sanitarian

SAS: Soil Absorption System

TBOH: Topsfield Board of Health

TRMRC: Topsfield Regional Medical Reserve Corps

VNA: Visiting Nurse Association

CALL TO ORDER

Chair Sheryl Knutsen called the meeting to order at 7:30 PM.

ANNOUNCEMENTS

Chair Sheryl Knutsen made the following announcements:

"The Minutes Secretary is using a recording device for this meeting. Is there anyone present who wishes to record this meeting?" There was no response to this question.

"We will be taking some items out of order tonight to fill the time before the Public Hearing scheduled to begin at 8:00 pm."

"The Board asks that you please sign in to indicate your attendance at tonight's meeting."

MEETING MINUTES

January 10, 2019

VOTE: Mr. Topping made a motion to approve the Meeting Minutes for January 10, 2019 with one edit. Mr. Mannelta seconded. The motion carried in a vote of 5-0.

NEW BUSINESS

Health Agent Job Description

The Board reviewed the Health Agent Job Description and asked Mr. Coulon to present a letter including a specific date of retirement.

VOTE: Mr. Topping made a motion to table a Discussion and Vote on the Health Agent Job Description to a Board of Health Meeting scheduled for this topic on Thursday, March 7, 2019. Seconded by Mr. Alley. The motion carried in a vote of 5-0.

Grow Spring! EXPO

Mr. Coulon informed the Board that the Board of Health has been invited to host a table at the Grow Spring! EXPO on Saturday, April 13, 2019. Chair Knutsen and Susan Winslow will host the table with the Bite Lab demonstration and information on mosquito and tick-borne illnesses. Because Mr. Coulon may be retired from his position as Health Agent by this date, the Board instructed Mr. Coulon to contact Alternate Health Agent Melanie Dineen RS to conduct the food inspections at this event.

John Coulon RS, Alternate Health Agent

VOTE: Mr. Topping made a motion to request that the Board of Selectmen appoint John Coulon RS as Alternate Health Agent upon his retirement as full-time Health Agent for the Town of Topsfield, the rate of pay to be determined by the Board of Health. Seconded by Dr. Guerra. The motion carried in a vote of 5-0.

8:00 PM PUBLIC HEARING: R1-6: REGULATIONS RESTRICTING YOUTH ACCESS TO TOBACCO

Chair Sheryl Knutsen made the following announcement,

"It is 8:00 PM, the time duly advertised in the Tri-Town Transcript on February 8, 2019 and February 15, 2019 for the Public Hearing on proposed changes to Topsfield R1-6: Regulations Restricting Youth Access to Tobacco. I will ask Vice-Chair Gerry Topping to read the legal notice to open the Public Hearing."

Mr. Topping read the following notice,

"Notice is hereby given that the Topsfield Board of Health will hold a Public Hearing in the Selectmen's Meeting Room at Town Hall, 8 West common Street, Topsfield at 8:00 pm on February 28, 2019 to address proposed changes to the following regulations: R 1-6: Regulations Restricting Youth Access to Tobacco."

VOTE: Mr. Topping made a motion to open the Public Hearing. Seconded by Mr. Mannelta. The motion carried in a vote of 5-0.

Chair Sheryl Knutsen announced that as the Hearing Officer, she would oversee the Board Members holding an initial discussion on the proposed updates to R 1-6: Regulations Restricting Youth Access to Tobacco after which the Public would be welcome to make comments or ask questions. Chair Knutsen thanked Board Member Gerry Topping for developing the document with the updates to the Regulation.

Ms. Knutsen also thanked Ron Beauregard from Healthy Communities Tobacco Collaborative for his contributions to this effort. Vice-Chair Gerry Topping informed the Meeting that the Board of Health has held two previous meetings where flavored tobacco products and vaping have been discussed and experts on the subject, members of the Tri-Town Coalition and members of the Tri-Town Coalition Youth Advisory Board have presented information and concerns to the Board. The Board reviewed the document provided by Mr. Topping outlining proposed updates to R1-6: Regulations Restricting Youth Access to Tobacco. Mr. Topping informed the Meeting that because the FDA has determined that vaping is dangerous to health and can lead to nicotine addiction, the Board is taking this step as a means to prevent youth from becoming addicted to nicotine products. The Board discussed ways to distinguish cigar wrappers from flavored tobacco products. Mr. Mannello pointed out that CMR 940, section 21.02 exempts cigars from a ban on flavored tobacco products.

The Board discussed the length of time for compliance with updated regulations once they are enacted. The Board determined that Tobacco Permit holders will have 30 days to comply.

Chair Sheryl Knutsen opened the floor for Public Comment at 8:25 pm.

Tri-Town Council Youth Advisory Board Members Justin Crosby and Abigail Moisan read prepared statements to the Board in support of a ban on flavored tobacco products and e-cigarettes.

Emily Coughlin and Olivia Scott shared concerns about vaping at Masconomet Regional High School and the difficulty of finding a rest room where students aren't vaping.

Cynthia Grandin PhD, a Boxford resident and researcher at North Carolina State University, Raleigh, NC, distributed a document she authored based on her research titled, "Effects of E-Cigarettes, Nicotine and Flavors on Genes and Disease Risks." Dr. Grandin read this document into the record, outlining the health hazards and chemically influenced diseases associated with Nicotine and vaping products. This document is attached.

Meredith Shaw from the Tri-Town Coalition addressed the Board to thank them for allowing members of the Tri-Town Coalition and Youth Advisory Board to share their thoughts and concerns on the topic of flavored tobacco products, e-cigarettes and vaping during this and previous Board of Health Meetings. Ms. Shaw informed the Board that vaping is not allowed at Masconomet Regional High School, and while the staff at the High School has made an effort to address the problem in the rest rooms, the most recent Youth Risk Behavior Survey indicated that 12% of 14-year-olds and 40% of 17-year-olds have tried vaping.

Diane Knight from Tobacco Free Mass read a letter into the record from Director Gwendolyn M. Stewart thanking the Topsfield Board of Health for taking steps to help protect young people from becoming addicted to tobacco and nicotine. Ms. Knight informed the Board that 140 Massachusetts towns have banned flavored tobacco products in this effort.

Resident Larry Fixler addressed the Board to share his experience as the former Chairman of the North Andover Board of Health during their effort to ban flavored tobacco and nicotine delivery devices. He informed the Board that, as a pharmacist, he knows that heating chemicals such as nicotine in e-cigarettes and vaping increases potency, creating an addiction that is hard to break. Mr. Fixler also shared his suggestions with the Board regarding the proposed changes to R1-6: Regulations Restricting Youth Access to Tobacco.

The Board thanked each of the individuals who shared their thoughts and concerns during the Public Hearing.

Chair Sheryl Knutsen confirmed that all Public Comment had been heard.

VOTE: Mr. Topping made a motion to close the Public Hearing. Seconded by Mr. Mannetta. The motion passed in a vote of 5-0.

Discussion and Vote

Discussion: The Board discussed the changes proposed on the document, R1-6: Regulations Restricting Youth Access to Tobacco (attached). The Board agreed to implement the changes outlined in the document with the addition of the following:

Delete "I" at the end of the header

R:1-6.4 (b) – change 'or' to 'of' in the last line

R:1-6.4 (e) – insert the words, 'with the exception of cigars as pursuant to CMR946, section 21.02'

R:1-6.5 (1) (c) – add the word, 'business'

R:1-6.5 (2) – add the words, 'before the Board of Health'

R1-6.8 Effective Date – change the date to '3/31/19'

Change the wording on Revised and Adopted to 'Revised and adopted by the Board of Health on 2/28/19.'

VOTE: Mr. Topping made a motion to amend R1-6: Regulations Restricting Youth Access to Tobacco as indicated in the document distributed to Board Members at this meeting (attached) and in the discussion. Seconded by Mr. Alley. The motion carried in a vote of 5-0.

NEW BUSINESS

Northeast Massachusetts Mosquito Control 2019 Vector Management Plan and Best Management Practice Plan

Board Members reviewed the documents distributed by Northeast Massachusetts Mosquito Control for the Town of Topsfield for 2019. In response to a question, Chair Knutsen explained that this is funded annually through the Cherry Sheet.

VOTE: Mr. Topping made a motion to accept the 2019 Best Management Practice Plan – Topsfield and the 2019 Integrated Pest and Vector Management Plan. Seconded by Mr. Mannetta.

OLD BUSINESS

Topsfield Village Shopping Center

Mr. Coulon informed the Board that he followed up on request from Leslie Voss at Francie's Boutique. Mr. Coulon went to Francie's where he determined that Ms. Voss's concerns are of a civil nature and do not fall under the jurisdiction of the Board of Health.

HEALTH AGENT REPORT

Maple Sugaring at Audubon

Mr. Coulon informed the Board that he will be at the Massachusetts Audubon Ipswich River Wildlife Sanctuary during weekends in March for Maple Sugaring tours, demonstrations and sampling. Mr. Coulon will meet with the new Director at the Sanctuary to review IRWS food safety procedures specific to this location prior to the event.

MHOA Winter Seminar

Mr. Coulon will be attending the MHOA/DEP Winter Seminar on March 14, 2019.

Court Date

Mr. Coulon informed the Board that he will be on call on March 19, 2019 to testify under subpoena in a civil suit at Lawrence Housing Court, Hobson v. Pratt (27R East Street).

Hospital Incident Command Structure

Mr. Coulon attended an educational event on Hospital Incident Command Structure on February 28, 2019.

REPORT FROM CHAIR KNUTSEN

Gas Explosion Follow-up

Chair Knutsen informed the Board that she attended a meeting to review the Emergency Services response to the gas explosions in Lawrence, North Andover, and Andover last Fall. Ms. Knutsen volunteered medical services at the shelter in Andover, MA.

HMCC Stakeholder Engagement

Ms. Knutsen attended the HMCC Stakeholder Engagement Meeting held at Topsfield Town Hall on January 25, 2019.

HMCC Conference

Ms. Knutsen will be attending the HMCC conference on Emerging Infectious Diseases on March 20, 2019.

CORRESPONDENCE

2019 Grow Spring! EXPO flyer and Exhibitor Invitation

Letter from MDPH dated 1/25/19 – Cancer Incidence Data in Massachusetts and Topsfield

Tri-Town Council Flyer – “The New Look of Nicotine” informational event on March 4, 2019

ADJOURN

VOTE: Mr. Topping made a motion to adjourn at 9:50 pm. Seconded by Mr. Mannetta. The Board approved the motion in a vote of 5-0.

Respectfully submitted,

Susan Winslow

Recording Secretary

DOCUMENTS

1. Agenda
2. Detailed Agenda
3. Draft R1-6: Regulations Restricting Youth Access to Tobacco
4. Letter from Gwendolyn M. Stewart, Director, Tobacco Free Mass dated 2/28/19
5. “Effects of E-Cigarettes, Nicotine and Flavors on Genes and Disease Risks” by Cynthia J. Grondin PhD
6. Draft Health Agent Job Description
7. January 10, 2019 Draft Meeting Minutes
8. Grow Spring! EXPO flyer and Exhibitor Information
9. Letter from MDPH regarding Cancer Incidence Data dated January 25, 2019
10. Tri-Town Council Flyer – “The New Look of Nicotine”

These Minutes were accepted at the March 21, 2019 Board of Health Meeting.

Pursuant to the 'Open Meeting Law, G.L. c. 30A, §18-25, the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.

2/28/16

2/28/19

Effects of E-Cigarettes, Nicotine and Flavors on Genes and Disease Risks
Cynthia J Grondin, PhD Department of Biology, North Carolina State University, Raleigh, NC

Currently, e-cigarettes are being marketed as playful, harmless recreational devices, but data are lacking on whether or not they are really harmless. We have a tool, the Comparative Toxicogenomics Database (CTD; <http://ctdbase.org>), that can look at the known constituents and give some insight into whether or not they are truly safe. CTD is a public scientific resource, funded by the National Institutes of Health, wherein PhD-level scientists manually capture data on chemicals, genes and diseases and integrate this data with select public data sets to help determine the molecular mechanisms underlying chemically-influenced diseases. CTD currently describes over 41 million relationships among chemicals, genes, phenotypes, molecular pathways and diseases.

Within CTD (1), Nicotine has been shown to interact with over 500 unique human genes in more than 1,200 types of interactions affecting the expression and modification of genetic material. Though Nicotine has not yet been confirmed as a complete carcinogen (capable of initiating, promoting and progressing tumors), CTD data indicate that it is involved in over 300 types of biological events, of which 70% are related to cell proliferation and cell death, events directly related to cancer. In addition, Nicotine is directly associated with over 200 diseases, including 20 different types of cancer, addiction disorders, cardiovascular diseases, respiratory tract diseases, and nervous system diseases, though associations do not necessarily indicate causation. In studies of young adults, Nicotine has been shown to affect the developing brain, increase depression and panic disorder (2), increase illicit drug use, and lower impulse control (3). Several forms of Nicotine exist, including protonated Nicotine (found in combustible cigarettes), which is less potent and does not cross membranes rapidly, and deprotonated/free base Nicotine (found in e-cigarettes). Free base Nicotine is more volatile and deposits more rapidly in the mouth and respiratory tract, and is found at higher pH levels. Recent studies have shown that e-cigarette flavors can alter the pH of e-liquids to increase the amount of nicotine in the more volatile free base form and affect absorption. For example, strawberry flavored e-liquid increased nicotine absorption and plasma levels of nicotine compared to tobacco flavored e-liquid (4). In addition, fruity e-cigarette flavors including cotton candy and apple, increased the attachment of pathogenic bacteria on tooth enamel (5). Other studies have shown that for smoking cessation, e-cigarette flavors are not required (6).

Despite the limited number of chemicals listed on the packaging of vaping products, hundreds of chemicals in addition to Nicotine have been detected in e-liquids, e-liquid flavorings and e-vapors. Fruit flavored e-liquids have been shown to include benzaldehyde, furaneol, ethyl lactate, ethyl maltol, methyl cinnamate, ethyl acetoacetate, vanillin, maltol, cyclotene, diethyl succinate, methylheptenone, linalool, limonene, and formaldehyde. These chemicals interact with thousands of unique genes in multiple ways, including changing gene expression, protein activity, and mutating genetic material. Further, these chemicals show statistical enrichment of nearly a thousand diseases in CTD's Set Analyzer tool. These diseases include cancer, nervous system diseases, cardiovascular diseases, metabolic diseases, urogenital diseases, and mental disorders. Specific chemicals in this data set, such as formaldehyde, are classified by the EPA as a 'probable human carcinogen', and have been shown to cause an increased risk of cancers such as myeloid leukemia.

Collectively, there is extensive evidence that the chemicals in e-liquids and e-vapors are NOT harmless. E-cigarette flavorings are merely masking the harmful nature of these products, while adding to the toxic chemical fingerprint of the e-liquids.

R:1-6 REGULATIONS RESTRICTING YOUTH ACCESS TO TOBACCO.

R:1-6.1 Declaration of Purpose.

WHEREAS, tobacco use by minors is a continuing problem with grave public health consequences because more than 82% of all smokers begin smoking before the age of eighteen (18) and more than 3,000 minors begin smoking every day in the United States.

WHEREAS the US Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of tobacco products by minors.

WHEREAS commercial Roll Your Own (RYO) machines enable loose, unpackaged tobacco to be poured into a machine and placed into empty, unpackaged cigarette tubes to be inhaled by individuals who smoke them. This procedure provides risk of contamination of the tobacco and unsanitary conditions in the machine and is injurious to public health; whereas commercial Roll Your Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the federal and state excise taxes that are imposed on conventionally manufactured cigarettes (RYO FILLING STATION, www.ryofillingstation.com (February 27, 2012). High excise taxes encourage adult smokers to quit and deter youth from starting (Kenneth E. Warner, Smoking and Health Implications of a Change in the Federal Cigarette Tax, 255, J. AM MED. ASS'N 1028 (1986), Frank J. Chaloupka & Rosalie Liccardo Pacula, The Impact of Price on Youth Tobacco Use, in 14 SMOKING AND TOBACCO CONTROL MONOGRAPHS: CHANGING ADOLSCENT SMOKING PREVALENCE 193 (U.S. Dep't health and Human Services et al. eds., 2001). Therefore, inexpensive cigarettes, like those produced from RYO machines, promote 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.

Pursuant to Massachusetts General Laws Chapter III, Section 31, the Topsfield Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

R:1-6.2 Authority

This regulation is promulgated under the authority granted to the Topsfield Board of Health under Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

R:1-6.3 Definitions

For the purposes of this Regulation, the following words shall have the meanings respectively ascribed to them by this paragraph:

- a. 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 or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Topsfield Board of Health.
- b. BOARD: The Board of Health of the Town of Topsfield.
- c. 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.
- d. COMPONENT PART: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
- e. 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.
- f. DISTINGUISHABLE: Perceivable by either the sense of smell or taste.
- g. EMPLOYEE: Any individual person who performs services for an employer in return for wages or profit.
- h. EMPLOYER: An individual person, partnership, association, corporation, trust or other organized group of individuals, including the Town of Topsfield or any agency thereof, which utilizes the services of one (1) or more individual employees.
- i. ENFORCEMENT OFFICER: Any individual designated an enforcement officer of these regulations shall be an acting agent of the Board of Health.
- j. 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

Comment [RB1]: Definition of "Adult-only retail tobacco store" is necessary to implement proposed flavored tobacco product restriction policy (Sect. 6 12)

Comment [RB2]: Definition of "Characterizing flavor" is necessary to implement proposed flavored tobacco product restriction policy. This term is contained in the definition of "flavored tobacco product."

Comment [RB3]: Definition of "Component part" is necessary to implement proposed flavored tobacco product restriction policy. This term is contained in the definition of "flavored tobacco product."

Comment [RB4]: Definition of "Constituent" is necessary to implement proposed flavored tobacco product restriction policy. This term is contained in the definition of "component part," which in turn is contained in the definition of "flavored tobacco product."

Comment [RB5]: Definition of "Distinguishable" is necessary to implement proposed flavored tobacco product restriction policy. This term is contained in the definition of "Characterizing Flavor," which in turn is contained in the definition of "Flavored Tobacco Product."

characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

d.k. 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.

Comment [RB6]: Definition of "Flavored Tobacco" is necessary to implement proposed flavored-tobacco product restriction policy.

e.l. INDIVIDUAL: Any employee, volunteer or any other person who patronizes an area where tobacco products are sold.

Comment [RB7]: This definition is necessary to implement the prohibition against tobacco sales at pharmacies (Section 6.11)

f.m. PERSON: Any person, 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 building, establishment, business, or restaurant or retail store, or the agents or designees of any of the foregoing.

n. RETAIL STORE: Any establishment selling goods or articles or products to the public.

g.o. 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 Topsfield Board of Health.

p. SELF-SERVICE DISPLAY: A display from which individual packs or cartons of tobacco products may be selected by a customer without assistance from a clerk or employee.

Comment [RB8]: This section is in Section 6.4.c.10, and simply is moved into this section since it is a definitional term.

q. 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.

Comment [RB9]: Definition of "Smoke Constituent" is necessary to implement proposed flavored-tobacco product restriction policy. This term is contained in the definition of "constituent" which in turn is contained in the definition of "component part" which in turn is contained in the definition of "flavored tobacco product."

h.r. SMOKING BAR: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by M.G.L. c. 270, § 22, to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue ("MDOR"). "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."

Comment [RB10]: This section is in Section 6.4.c.9, and simply is moved into this section since it is a definitional term.

~~i.s.~~ **TOBACCO VENDING MACHINE:** Any machine or device designated for or used for the vending of cigarettes, cigars, tobacco or tobacco products upon the insertion of coins, trade checks, swipe cards, slips or any other forms of payment.

~~j.t.~~ **TOWN:** Town of Topsfield

~~k.u.~~ **VOLUNTEER:** Any individual not compensated for services rendered.

~~l.v.~~ **COMMERCIAL ROLL-YOUR-OWN (RYO) MACHINE:** A mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products. Home-use RYO machines are not Commercial Roll-Your-Own machines.

~~m.w.~~ **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.

~~n.x.~~ **TOBACCO/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 the 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.

R:1-6.4 Tobacco Sales to ~~Minors~~ Persons Under the Age of 21 Prohibited

- a. ~~Sale to Minors~~ **Persons Under the Age of 21.** In conformance with Massachusetts General Laws, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any person under the age of twenty-one (21) or, not being his parent or guardian gives a cigarette, chewing tobacco, snuff or tobacco in any of its forms to any person under the age of twenty-one (21) shall be punished according to the fine schedule set forth in Section 9 6.5 of this section.
- b. **Posting State Law.** In conformance with 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 cigarettes at retail. The notice to be posted shall be provided

Comment [RB11]: This updates the title of the section to reflect the "age 21" change that the Board already adopted

Comment [RB12]: Ditto

Comment [RB13]: Strike Section 9 and insert Section 6.5

by the Massachusetts Department of Public Health and made available from the Board of Health of the Town of Topsfield. Such notice shall be at least 48 square inches and shall be posted at the cash register which receives the greatest volume of single cigarette package sales in such a manner so that it may be readily seen by a person standing or approaching the cash register. Such 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. For all other cash registers that sell cigarettes, a notice shall be attached which is no smaller than nine (9) square inches, posted in a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of no less than four (4) feet or more than nine (9) feet from the floor.

c. Permit for Location and Sales of Tobacco.

1. After the effective date of this Regulation, all retailers who are required to hold a state license to sell cigarettes or other tobacco products, will be required to hold and maintain a valid, "Permit for Location and Sales: from the Town of Topsfield for each location at which tobacco products are sold.
2. After the effective date of this Regulation, The Board of Health of the Town of Topsfield will issue a "Permit for Location and Sales" that will specify the name, address and approved location per the Board of Health of the Town of Topsfield or their designated agent(s) for retailers who sell tobacco products.
3. After receiving the permit, the merchant will receive signs made that state, "Sale of cigarettes or any tobacco products to persons under age ~~eighteen (18)~~ twenty-one (21) is illegal, M.G.L. Chapter 270, Sections 6 & 7."
4. The term of the permit shall be one year.
5. The fee for the one year tobacco retailer's "Permit for Location and Sales" is twenty-five dollars (\$25.00) for each tobacco retail location.
6. A "Permit for Location and Sales" is non-transferable, except a new permit will be issued to a tobacco retailer who changes locations and pays the required fee.
7. During such time that a "Permit for Location and Sales" of tobacco products has been suspended for violations of this Regulation, all tobacco products must be removed from the premises. Any person or entity selling any tobacco products without said permit shall be fined according to Section 9 6.5 until ~~said permit is reinstated by the Board of Health of the Town of Topsfield or its designed agent(s).~~
8. 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

Comment [RB14]: Strike "eighteen (18)" and substitute with "twenty-one (21)".

Comment [RB15]: Strike Section 9 and substitute with Section 6.5.

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.

9. ~~Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by M.G.L. c. 270, § 22, to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue ("MDOR"). "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."~~

10. ~~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 Topsfield Board of Health.~~

Comment [RB16]: This section has been moved to Section 6.3.r since it is a definitional term.

- d. Tobacco Vending Machines. After the effective date of this Regulation, it shall be unlawful to sell or distribute any tobacco product through a cigarette vending machine or any other device used in the sale or distribution of tobacco products within the town of Topsfield.
- e. Out-of-Package Sales Prohibited. No person or entity may sell or cause to be sold, or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes. Retailers are prohibited from opening any cigarette package to sell or distribute individual cigarettes. 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. 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. 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 21.05, no person shall sell or distribute nicotine in a liquid or gel substance in Lynnfield/Topsfield after March 15/February 28, 2019/6 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.

Comment [RB17]: This section has been moved to Section 6.3.a. since it is a definitional term. The term has been changed to "Adult-only retail tobacco store."

Comment [RB18]: This new language prohibiting out-of-package sales prohibits not only prohibits breaking up cigarette packs but also prohibits breaking up packages of vaping juice pods and cartridges. This language prevents, for example, a seller from opening up a package of 4 Juul pods and selling each pod individually. This language keeps intact the language prohibiting the sale of single cigarettes. It also provides the local Board of Health authority to enforce an Attorney General regulatory provision prohibiting the sale of vape juices in containers without a child-resistant caps and another Attorney General provision that prohibits the mixing of vape juices at the retail store location.

- f. Self-Service Display Restrictions. No retailer shall sell or offer for sale tobacco products by means of a self-service display. All humidors including, but not limited to, walk-in humidors must be locked.
- g. Free Distribution of Tobacco Products. No retailer shall cause to be distributed any free samples or tobacco products.
- h. Sales by Employees. Each retailer shall verify by means of photographic identification containing the bearer's date of birth, that no person purchasing tobacco products is younger than 21 years of age, ~~except that no such verification~~ Verification is required for any purchaser over under the age of 26 ~~40~~.
- i. Commercial Roll-Your-Own machines. All commercial Roll-Your-Own machines are prohibited.

Comment [RB19]: This provision requires retailers to ID all customers who appear under the age of 40.

R:1-6.5 Penalties

1. Any person who violates any section of this Regulation may be subject to the following fines and penalties:
 - a. Fifty dollar (\$50.00) fine for the first offense.
 - b. One hundred dollar (\$100.00) fine for the second offense within 24 months of the date of the current violation ~~one (1) year~~ and/or suspension of any license issued by the Board of Health for a period of seven (7) consecutive business days.
 - c. Two hundred dollar (\$200.00) fine for third offense within a 24-month period ~~one (1) year~~, and for every other offense within a 24-month period ~~one (1) year~~, and/or suspension of any license issued by the Board of Health for a period of thirty (30) consecutive days.
 - d. Removal of vending machine.
2. The Board of Health of the Town of Topsfield shall provide written notice to the permittee of the intent to suspend a license issued by the Board of Health. The notice shall contain the reasons for the suspension and establish a date and time for the hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.
3. Non-Criminal Disposition
 - a. Whoever violates any provision of this Regulation, the violation of which is subject to a specific penalty, may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Comment [RB20]: This provision allows for a 2-year time period to look back in order to calculate a 2nd offense.

Comment [RB21]: These provisions allow for a 2-year time period to calculate 3rd and subsequent offenses.

- b. Each day on which any violation exists shall be deemed a separate offense.
- c. Penalty: \$50.00 fine for first offense
 \$100.00 fine for second offense
 \$200.00 fine for third offense

R1-6.6 Enforcement.

Enforcement of this Regulation shall be implemented by the Board of Health of the Town of Topsfield or its designated agent(s). The designated enforcement officers of these regulations shall be the agents of the Board of Health. Said agents, as an alternative to initiating criminal proceedings, may give to the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof at any time during office hours, not later than twenty (20) days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The notice shall be served and all procedures followed as set out in said Massachusetts General Laws, Chapter 40, Section 21D, as amended.

Any citizen who desires to register a complaint of non-compliance under the Regulation may do so by contacting the Board of Health of the Town of Topsfield or its designated agent(s).

R:1-6.7 Severability.

If any paragraph or provision of this Regulation is found to be illegal or against public policy or unconstitutional, it shall not affect the legality of any remaining paragraphs or provision being in force.

R:1-6.8 Effective date. This regulation shall take effect on 9/23/09

R:1-6.9 Prohibition of Smoking Bars.

Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is hereby prohibited in a smoking bar.

R:1-6.10 Prohibition of Smoking in Retail Tobacco Stores.

Pursuant to Massachusetts General Laws Chapter 270, Section 22 (j) smoking is hereby prohibited in retail tobacco stores.

R:1-6.11 Prohibition of the Sale of Tobacco Products by Health Care Institutions: No health care institution located in Topsfield 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.

R:1-6.12 Sale of Flavored Tobacco 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.

Comment [RB22]: While state law, effective Dec. 31, 2018, prohibits sales at pharmacies, this language assures that Topsfield's prohibition against such sales will remain a local law, even if the state law is modified or repealed.

Comment [RB23]: This is the key language that implements the flavor restriction.

Revised and adopted by the Board of Health on 4/28/16.

