Town of Arlington
Department of Health and Human Services
Office of the Board of Health
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REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS

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 throat[1];

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

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

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin[4];

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

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[5];

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

[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/.

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 14.9% in 2009[6];

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported[7];

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[8];

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%[9];

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes[10];

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[11] and high prices deter youth from starting.[12] 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;

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

[6] CDC (2009) Youth *Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 72 (No SS-55)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

[7] 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.

[8] 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.

[9] 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.nebi.nim.gov/pubmed/21809109.

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

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

[12] 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/.

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)[13];

Whereas the sale of tobacco products and nicotine delivery products are 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 and nicotine delivery products are incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010[14]; 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;[15]

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,[16] largely because these flavored products were marketed to youth and young adults,[17] and younger smokers were more likely to have tried these products than older smokers;[18]

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

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

[15] SAMSHA, Analysis of data from the 2011 National Survey on Drug Use and Health

[16] 21 U.S.C. § 387g.

[17] 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.

[18] 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.

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,[19] neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

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;[20]

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;[21]

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

B. AUTHORITY:

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

C. DEFINITIONS:

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

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.

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[19] 21 U.S.C. § 387g

[20] 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.

[21] 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.

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

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

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

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

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.
Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (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 and dentist offices.

Minor: Any individual who is under the age of eighteen (18).

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

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 or nicotine delivery products directly to consumers who applies for and receives a tobacco and nicotine delivery product sales permit or any person who is required to apply for a Tobacco and Nicotine Delivery Product Sales Permit pursuant to these regulations, or his or her business agent.

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 tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Arlington Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product or a nicotine delivery product without assistance from an employee or store personnel.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms. 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 or nicotine delivery product.

D. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PROHIBITED:

1. From July 1, 2013 until July 1, 2014, no person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to any person under the age of nineteen (19) or not being the recipient's parent or legal guardian, give tobacco products or nicotine delivery products to any person under the age of nineteen (19). From July 1, 2014 to July 1, 2015, no

person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to anyone under the age of twenty (20) or not being the recipient's parent or legal guardian, give tobacco products or nicotine delivery products to anyone under the age of twenty (20). As of July 1, 2015, no person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to any person under the age of twenty-one (21) or not being the recipient's parent or legal guardian, give tobacco products or nicotine delivery products to any person under the age of twenty-one.

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 Arlington 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 nicotine delivery products at retail shall conspicuously post a sign stating The sale of nicotine delivery products to persons under the age of (as outlined in Section D.1) 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, "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 4 or greater than 9 feet from the floor.

c. In addition to the notice required Section D 2. (a), a notice provided by the Arlington Board of Health shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco and nicotine delivery products at retail. Such notice shall state that the sale of tobacco products to person's under the age as outlined in Section D.1. is illegal.

d. 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 Arlington Board of Health that discloses current referral information about smoking cessation.

3. Identification: Each person selling or distributing tobacco or nicotine delivery products 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 at the age stated in Section (D) (1) or older. Verification is required for any person that appears under the age of 27.

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

E. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT:

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

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

3. 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 and Nicotine Delivery Product Sales Permit can be issued.

4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be $500.00, renewable on January 1.

5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.

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

7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery 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.

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

9. Issuance of a Tobacco and Nicotine Delivery 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. Issuance and holding of a Tobacco and Nicotine Delivery 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.

11. A Tobacco and Nicotine Delivery 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.

12. Mandatory retailer training: As part of the Tobacco and Nicotine Delivery Product Sales Permit renewal process, permit holders are required to send at least one (1) employee who works on the premises to a tobacco retailer training conducted by the Arlington Board of Health once per year. The Arlington Board of Health will schedule the trainings and notify permit holders of the date (s). Failure of the establishment to send a retailer may result in suspension or revocation of a permit to sell tobacco and nicotine delivery products in the Town of Arlington.

13. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits: The maximum number of permits allowed shall be the number of Tobacco and Nicotine Delivery Product Sales Permits issued in the Town of Arlington and in good standing on January 1, 2015. No new permits shall be issued such that the number of outstanding permits would exceed the maximum number of permits. Any permit holder who has failed to renew an existing permit within 30 days of expiration will be treated as a first-time permit applicant. A purchaser of a business that holds a current Tobacco and Nicotine Delivery 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 and/or nicotine delivery products. An owner of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit that intends to change the physical location of the business in Arlington must notify the Board of Health in writing thirty (30) days before such change of location occurs. The permit will be reissued reflecting the continuation of said business at the new address. Any permit holder who has failed to notify the Board of Health in writing thirty (30) days before changing the physical location of the business will be treated as a first-time applicant. New applicants for permits who are applying at a time when the total number of outstanding permits meets or exceeds the maximum number of permits allowed will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-serve" basis as permits are either not renewed or are returned to the Board of Health.

F. CIGAR SALES REGULATED:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.

2. This Section shall not apply to:

a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents ($2.50) or more.

3. The Arlington 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. PROHIBITION OF THE SALE OF BLUNT WRAPS:

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

H. PROHIBITION OF THE SALE OF FLAVORED TOBACCO AND NICOTINE DELIVERY PRODUCTS:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco or nicotine delivery product at retail, except in retail tobacco stores.

I. FREE DISTRIBUTION AND COUPON REDEMPTION:

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

J. 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.

K. SELF-SERVICE DISPLAYS:

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

L. VENDING MACHINES:

All tobacco and/or nicotine delivery product vending machines 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 AND NICOTINE DELIVERY PRODUCTS BY HEALTH CARE INSTITUTIONS:

No health care institution located in Arlington shall sell or cause to be sold tobacco or nicotine delivery 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 or nicotine delivery products.

O. PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS BY EDUCATIONAL INSTITUTIONS:

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

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 pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:

a. In the case of a first violation, a fine of one hundred dollars ($100.00) and the Tobacco and Nicotine Delivery 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 current violation, a fine of two hundred dollars ($200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for fourteen (14) consecutive business days.

c. In the case of three or more violations within a 36 month period, a fine of three hundred dollars ($300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.

d. The Board of Health reserves the right to revoke a Tobacco and Nicotine Delivery Product Sales Permit.

2. If a permit holder has obtained a permit or license from any other licensing or permitting authority within the Town of Arlington, the Board of Health shall notify such authority in writing of any violations of this regulation.

3. Refusal or failure to cooperate with inspections pursuant to this regulation may result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended may be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.

5. The Arlington Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery 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 Arlington Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, 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 and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products 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 Arlington 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 Arlington Board of Health or its designated agent(s) and the Board shall investigate.

S. SEVERABILITY:

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

T. EFFECTIVE DATE:

This regulation shall take effect on March 1, 2015.

1. _____
Michael Fitzpatrick, DMD

2. _____
Marie Walsh-Condon, MD

3. _____
Kenneth Kohlberg, JD, MPH

Amended on 09/11/2013
Amended on 12/03/2014