

## 1. Agenda

### Documents:

[2022.09.19\\_BOH\\_AGENDA.PDF](#)  
[2022.09.19\\_BOH\\_AGENDA\\_REVISED.PDF](#)

## 2. Meeting Materials

### Documents:

[2022.09.19\\_BOARD\\_OF\\_HEALTH-REQUEST\\_FOR\\_MINUTES.PDF](#)  
[2022\\_TOBACCO\\_SALES\\_SOUTHBOROUGH\\_REGULATION\\_DRAFT\\_7.11.PDF](#)  
[2022\\_TOBACCO\\_SALES\\_SOUTHBOROUGH\\_REGULATION\\_DRAFT\\_7.11\\_2.PDF](#)  
[BOH\\_NOISE\\_POLLUTION\\_GUIDANCE\\_AUGUST\\_30EDITED.PDF](#)  
[MEADOW\\_LANE.PDF](#)  
[SOUTHBOROUGH\\_BOH\\_NOISE\\_POLLUTION\\_POLICY.PDF](#)



**Town of Southborough  
Board of Health**  
9 Cordaville Road, Lower Level  
Southborough, MA 01772-1662

**RECEIVED**  
By Town Clerk/amb at 4:25 pm, Aug 31, 2022

Phone: (508) 481-3013

**Monday, September 19, 2022 at 7:00 pm**  
**Meeting Agenda**  
**Hybrid Meeting – McAuliffe Meeting Room (Town House - 17 Common Street)**  
**& Virtual**

Pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021, this meeting will be conducted via remote participation. This meeting may be watched or residents may participate in the meeting remotely with the meeting link at: <https://www.southboroughtown.com/remotemeetings>

**Business Item (Board May Vote):**

1. Call the Meeting to Order
2. **PUBLIC HEARING:** Southborough Tobacco Regulations
3. Public Comment

Chelsea Malinowski, Dr. Safdar Medina, Nancy Sacco



**Town of Southborough  
Board of Health  
9 Cordaville Road, Lower Level  
Southborough, MA 01772-1662**

**RECEIVED**  
By Town Clerk/amb at 4:09 pm, Sep 15, 2022

Phone: (508) 481-3013

**Monday, September 19, 2022 at 7:00 pm  
Meeting Agenda - Revised  
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& Virtual**

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**Business Item (Board May Vote):**

1. Call the Meeting to Order
2. **PUBLIC HEARING:** Southborough Tobacco Regulations
3. Vote to Approve Minutes from the 8/23/22 and 9/13/22 Meetings
4. Variance Request for 16 Meadow Lane
5. Financial Status
  - a) Tobacco Revolving Account
  - b) Vaccine Revolving Account
6. Nurse Report
  - a) Flu Clinic
  - b) Covid Clinics
7. NEHA/FDA Self-Assessment Food Safety Grant
8. Approval of Noise Policy and Guidance Documents
9. Future Meetings
  - a) Tuesday, October 11, 2022 – BOH Meeting
  - b) Thursday, October 13, 2022 – Fall Town Meeting
10. Public Comment

Chelsea Malinowski, Dr. Safdar Medina, Nancy Sacco

Southborough Town Code § 9-25 requires that minutes of each public meeting and the documents used at the meeting be submitted to the Town Clerk within 45 days of the meeting and that the Town Clerk notify the board or committee chair when that reporting requirement is not met.

I'm writing to advise you that as of today, the Town Clerk's Office has not received the minutes and documents used at the **9/19/22** meeting of the **Board of Health**.

The Attorney General has determined that a document is considered to be "**used at a meeting**" when the document is:

- Physically present, and
- Identified by name, and
- Its contents are discussed at the meeting.

As a reminder, please submit the documents as individual files and ensure the name of **each separate file** matches how it is identified in the **Documents Used at This Meeting** section of the minutes.

**Please reply to this email with your response which will be posted on the town website until the minutes and documents are received.**

Please advise if you are unable to provide minutes for one of the following reasons:

1. The meeting was cancelled.
2. No meeting was held due to the lack of a quorum.

The meeting involved executive session(s) and the minutes for the executive session portion(s) cannot be released at this time. Note that minutes for the open session portion of a meeting must be released. Also, the board or committee must review any withheld executive session minutes regularly to ensure there is still a valid reason to withhold minutes from the public. We suggest you consult with Town Counsel on any matters concerning the release of executive session minutes.

Thank you,

Kate Battles  
Town of Southborough  
17 Commons Street  
Southborough, MA 01772  
Phone: 508-485-0710 ext. 3006  
Fax: 508-480-0161

## **Regulation of the Southborough Board of Health Restricting the Sale of Tobacco 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<sup>1</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence<sup>4</sup>;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers<sup>5</sup>;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke<sup>6</sup>;

Whereas 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<sup>7</sup>;

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<sup>1</sup> 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](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> 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/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

<sup>3</sup> U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>5</sup> *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

<sup>6</sup> SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

<sup>7</sup> 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 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%<sup>8</sup>;

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year old's who smoked cigars reported smoking cigar brands that were flavored<sup>9</sup>;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking<sup>10</sup>;

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<sup>11</sup>;

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale<sup>12</sup>;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation<sup>13</sup>;

Whereas menthol makes it easier for youth to initiate tobacco use<sup>14</sup>;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018<sup>15</sup>;

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<sup>8</sup> 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](http://www.ncbi.nlm.nih.gov/pubmed/21809109).

<sup>9</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

<sup>10</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>11</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://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](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>12</sup> See fn. 3 at p. 85.

<sup>13</sup> [www.fda.gov/downloads/ucm361598.pdf](http://www.fda.gov/downloads/ucm361598.pdf), <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

<sup>14</sup> [www.tobaccofreekids.org/assets/factsheet/0390.pdf](http://www.tobaccofreekids.org/assets/factsheet/0390.pdf)

<sup>15</sup> MA YRBS 2017

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”<sup>16</sup>;

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<sup>17</sup>;

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

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”<sup>18</sup>.

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

**B. Authority:**

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

**C. Definitions:**

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

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” under M.G.L. c. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food, beverages or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Southborough Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

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<sup>16</sup> 310 CMR 30.136

<sup>17</sup> 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](http://www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract).

<sup>18</sup> Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

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

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

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

**Child-Resistant Package:** Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in such kits or roll-your-own packages shall be considered “blunt wraps” for the purpose of this regulation.

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

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

**Coupon:** Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

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



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

**Electronic Nicotine Delivery System:** An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

**Employee:** Any individual who performs services for an employer.

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

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

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

**Liquid Nicotine Container:** A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid

nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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

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

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

Person: Any retailer, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retailer: A person that operates a retail establishment.

Rolling Papers: Sheets, rolls, tubes, cones or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly-smoked herbs.

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

Schools: Public or private elementary or secondary schools.

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

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the town of Southborough; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars”, “hookah bars” and “vape bars”.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

Tobacco Product: A product containing or 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, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

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

**D. No Tobacco Sales to Persons Under Twenty-One (21) Years Old:**

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.
2. Required Signage:
  - a. All retail establishments, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health.

Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

3. Identification: Each person selling or distributing tobacco products shall first verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

**E. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the town of Southborough without first obtaining a Tobacco Product Sales Permit issued annually by the Southborough Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in Southborough are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Southborough.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Southborough 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 about the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee shall be determined by the Southborough Board of Health annually.

5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
6. 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.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the age of 21 three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
9. Maximum Number of Tobacco Product Sales Permits.
  - a. At any given time, there shall be no more than six (6) Tobacco Product Sales Permits issued in Southborough. No existing permit holder's renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits 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 are either not renewed, revoked, or are returned to the Board of Health.
  - b. As of the effective date of this regulation, any permit surrendered, revoked or not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Southborough Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.
  - c. Of the permits allowed pursuant to section 9(a) above, there shall be no more than zero (0) Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, as defined above, in Southborough. No permit renewal will be denied based on the

requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

- d. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within one thousand (1000) 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.
- e. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises
- f. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business may acquire said permit providing the applicant submits a valid application and meets all conditions within this regulation within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the Applicant intends to sell tobacco products, as defined herein.

An application for transfer of a Tobacco Product Sales Permit to a new owner for the sale of tobacco products from an existing location with a valid Tobacco Product Sales Permit will not be denied solely on the basis of the quota set forth in this section, provided, however, that such an application will be treated as a new application in all other respects. If the permit transfer application is not received within said sixty days of the transfer of the business, the permit will be deemed surrendered

**F. Prohibition of Smoking Bars:**

Smoking Bars are prohibited in the town of Southborough.

**G. Cigar Sales Regulated:**

- 1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents (\$2.90) or more.

2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars and eighty cents (\$5.80) or more.

3. This Section shall not apply to 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 Southborough.

4. The Southborough 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.

**H. Sale of Flavored Tobacco Products Prohibited:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer, do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

**I. Nicotine Content in Electronic Nicotine Delivery Systems:**

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter. Retailers must obtain from a manufacturer documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

**J. Prohibition of the Sale of Blunt Wraps:**

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

**K. Free Distribution and Coupon Redemption:** No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or

3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

**L. Out-of-Package Sales:**

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Southborough Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."
4. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

**M. Self-Service Displays:**

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

**N. Vending Machines:**

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

**O. Non-Residential Roll-Your-Own Machines:**

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

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



No health care institution located in Southborough 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.

**Q. Prohibition of the Sale of Tobacco Products by Educational Institutions:**

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

**R. Incorporation of State Laws and State Regulations:**

1. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§6, 6A, 7, 28, 29 and M.G.L. Ch. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”) and 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”).

**S. Violations:**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business violations of the sections of this regulation that incorporate MGL Ch. 270, Section 6 and 105 CMR 665, the following penalties apply:
  - a. In the case of a first violation, a fine of one thousand dollars (\$1000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 040(d), for three (3) consecutive business days.
  - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

2. For violations of all other sections specific to the town of Southborough, the violator shall receive:
- a. In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for three (3) consecutive business days.
  - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
  - d. State Law Fines and Local Regulation Fines:

**Policies Subject to State Law Fines**  
**(G.L. Chapter 270, §6 (Section S. 1))**

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §6)
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §6)
- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a minor into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))

**Policies Subject To Local Regulation Fines**  
**(Section S.2)**

- Prohibition of the Sale of Blunt Wrap
- Ban on Smoking Bars
- Cigar Sales Regulated
- Tobacco Product Sales in Health Care Institutions
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Maximum Number of Tobacco Sales Permits
- No New Tobacco Retailer Near Schools
- No New Tobacco Retailer Near Existing Permit Holder
- Mass. Department of Revenue license(s)
- Retailer possessing, holding, keeping prohibited flavor products
- Local Tobacco Sales Permit Requirement for retailers who are neither Smoking Bars nor Retail Tobacco Stores

Permit suspensions and permit revocations are calculated using the total number of a retailer's violations, combining those violations that receive state-mandated fines and those that receive local fines. Where there is a difference in permit suspension periods, the longer period shall apply.

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
4. Failure 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.
5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
6. The Southborough Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Southborough Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
7. For purposes of such fines, the Board of Health 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.

**T. Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.

**U. Separate Violations:**

Each day any violation exists shall be deemed to be a separate offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

**V. Enforcement:**

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

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

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

**W. Severability:**

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

**X. Effective Date:**

This regulation shall take effect on \_\_\_\_\_, 2022.

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## **Regulation of the Southborough Board of Health Restricting the Sale of Tobacco 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<sup>1</sup>;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin<sup>2</sup> and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,<sup>3</sup> and that it is addiction to nicotine that keeps youth smoking past adolescence<sup>4</sup>;

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers<sup>5</sup>;

Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke<sup>6</sup>;

Whereas 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<sup>7</sup>;

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<sup>1</sup> 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](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm).

<sup>2</sup> 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/](http://www.cdc.gov/tobacco/data_statistics/sgr/2010/).

<sup>3</sup> U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

<sup>4</sup> *Id.* at Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>5</sup> *United States v. Phillip Morris, Inc., RJ Reynolds Tobacco Co., et al.*, 449 F.Supp.2d 1 (D.D.C. 2006) at Par. 3301 and Pp. 1605-07.

<sup>6</sup> SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U. S. Department of Health and Human services (HHA).

<sup>7</sup> 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 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%<sup>8</sup>;

Whereas 59% of high school smokers in Massachusetts have tried flavored cigarettes or flavored cigars and 25.6% of them are current flavored tobacco product users; 95.1 % of 12 – 17 year old's who smoked cigars reported smoking cigar brands that were flavored<sup>9</sup>;

Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking<sup>10</sup>;

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<sup>11</sup>;

Whereas the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale<sup>12</sup>;

Whereas the U.S. Food and Drug Administration and the Tobacco Products Scientific Advisory Committee concluded that menthol flavored tobacco products increased nicotine dependence, decreased success in smoking cessation<sup>13</sup>;

Whereas menthol makes it easier for youth to initiate tobacco use<sup>14</sup>;

Whereas use of e-cigarettes among students in Massachusetts is 20.1%, representing a 78% increase for high schoolers and a 48% increase for middle schoolers from 2017 to 2018<sup>15</sup>;

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<sup>8</sup> 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](http://www.ncbi.nlm.nih.gov/pubmed/21809109).

<sup>9</sup> Massachusetts Department of Public Health, 2015 Massachusetts Youth Health Survey (MYHS); Delneve CD et al., *Tob Control*, March 2014: Preference for flavored cigar brands among youth, young adults and adults in the USA.

<sup>10</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 508-530, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>11</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://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](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

<sup>12</sup> See fn. 3 at p. 85.

<sup>13</sup> [www.fda.gov/downloads/ucm361598.pdf](http://www.fda.gov/downloads/ucm361598.pdf), <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

<sup>14</sup> [www.tobaccofreekids.org/assets/factsheet/0390.pdf](http://www.tobaccofreekids.org/assets/factsheet/0390.pdf)

<sup>15</sup> MA YRBS 2017

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”<sup>16</sup>;

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<sup>17</sup>;

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

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”<sup>18</sup>.

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

**B. Authority:**

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

**C. Definitions:**

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

Adult-Only Retail Tobacco Store (also known as “Retail Tobacco Store” under M.G.L. c. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food, beverages or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Southborough Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

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<sup>16</sup> 310 CMR 30.136

<sup>17</sup> 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](http://www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract).

<sup>18</sup> Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

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

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

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

**Child-Resistant Package:** Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

**Cigar:** Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco, with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in such kits or roll-your-own packages shall be considered “blunt wraps” for the purpose of this regulation.

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

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

**Coupon:** Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

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



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

**Electronic Nicotine Delivery System:** An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

**Employee:** Any individual who performs services for an employer.

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

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

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

**Liquid Nicotine Container:** A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid

nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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

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

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

**Person:** Any retailer, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

**Retailer:** A person that operates a retail establishment.

**Rolling Papers:** Sheets, rolls, tubes, cones or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. When rolling a cigarette, the filler may be tobacco, cannabis or other commonly-smoked herbs.

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

**Schools:** Public or private elementary or secondary schools.

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

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the town of Southborough; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars”, “hookah bars” and “vape bars”.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

Tobacco Product: A product containing or 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, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that “tobacco product” shall also include any component, part or accessory of a tobacco product; and provided further, that “tobacco product” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

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

**D. No Tobacco Sales to Persons Under Twenty-One (21) Years Old:**

1. No person shall sell or provide a tobacco product to a person under twenty-one (21) years old.
2. Required Signage:
  - a. All retail establishments, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health.

Such signage shall include: (i) a copy of M.G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) notice to consumers that the sale of flavored electronic nicotine systems are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

3. Identification: Each person selling or distributing tobacco products shall first verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 or older.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

**E. Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the town of Southborough without first obtaining a Tobacco Product Sales Permit issued annually by the Southborough Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in Southborough are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Southborough.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Southborough 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 about the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee shall be determined by the Southborough Board of Health annually.

5. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
6. 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.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the age of 21 three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
9. Maximum Number of Tobacco Product Sales Permits.
  - a. At any given time, there shall be no more than six (6) Tobacco Product Sales Permits issued in Southborough. No existing permit holder's renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. New applicants for permits who are applying at a time when the maximum number of permits 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 are either not renewed, revoked, or are returned to the Board of Health.
  - b. As of the effective date of this regulation, any permit surrendered, revoked or not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Southborough Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.
  - c. Of the permits allowed pursuant to section 9(a) above, there shall be no more than zero (0) Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, as defined above, in Southborough. No permit renewal will be denied based on the

requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

- d. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within one thousand (1000) 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.
- e. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises
- f. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business may acquire said permit providing the applicant submits a valid application and meets all conditions within this regulation within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the Applicant intends to sell tobacco products, as defined herein.

An application for transfer of a Tobacco Product Sales Permit to a new owner for the sale of tobacco products from an existing location with a valid Tobacco Product Sales Permit will not be denied solely on the basis of the quota set forth in this section, provided, however, that such an application will be treated as a new application in all other respects. If the permit transfer application is not received within said sixty days of the transfer of the business, the permit will be deemed surrendered

**F. Prohibition of Smoking Bars:**

Smoking Bars are prohibited in the town of Southborough.

**G. Cigar Sales Regulated:**

- 1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents (\$2.90) or more.

2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars and eighty cents (\$5.80) or more.

3. This Section shall not apply to 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 Southborough.

4. The Southborough 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.

**H. Sale of Flavored Tobacco Products Prohibited:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain from a manufacturer documentation certifying that products sold by the retailer, do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

**I. Nicotine Content in Electronic Nicotine Delivery Systems:**

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter. Retailers must obtain from a manufacturer documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

**J. Prohibition of the Sale of Blunt Wraps:**

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

**K. Free Distribution and Coupon Redemption: No person shall:**

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or

3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

**L. Out-of-Package Sales:**

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Southborough Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."
4. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

**M. Self-Service Displays:**

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

**N. Vending Machines:**

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

**O. Non-Residential Roll-Your-Own Machines:**

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

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



No health care institution located in Southborough 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.

**Q. Prohibition of the Sale of Tobacco Products by Educational Institutions:**

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

**R. Incorporation of State Laws and State Regulations:**

1. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at M.G.L. Ch. 270, §§6, 6A, 7, 28, 29 and M.G.L. Ch. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”) and 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”).

**S. Violations:**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business violations of the sections of this regulation that incorporate MGL Ch. 270, Section 6 and 105 CMR 665, the following penalties apply:
  - a. In the case of a first violation, a fine of one thousand dollars (\$1000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 040(d), for three (3) consecutive business days.
  - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

2. For violations of all other sections specific to the town of Southborough, the violator shall receive:
- a. In the case of a first violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for three (3) consecutive business days.
  - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
  - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
  - d. State Law Fines and Local Regulation Fines:

**Policies Subject to State Law Fines**  
**(G.L. Chapter 270, §6 (Section S. 1))**

- Tobacco and Vape Sales to persons under the age of 21 (G.L. Ch. 270, §6)
- Flavored Tobacco Product Sales Restrictions (G.L. Ch. 270, §6)
- Required Retailer Signage (105 CMR 665.015)
- Ban on Free Distribution (105 CMR 665.025)
- Ban on Self-Service Displays (105 CMR 665.010(B))
- Ban on Out-Of-Package Sales (105 CMR 665.030)
- Sales Without a Local Tobacco Product Sales Permit for Smoking Bars and Retail Tobacco Stores only (105 CMR 665.013(A))
- Failure to Check Identification of Purchaser (105 CMR 665.020)
- Nicotine Content in Electronic Nicotine Delivery Systems (G.L. Ch. 270, §6)
- Coupon Redemption (105 CMR 665.025)
- Child-Proofed Liquid Nicotine Containers Required (105 CMR 665.035)
- Failure to obtain manufacturer's non-flavored certification (105 CMR 665.010(E))
- Failure to obtain manufacturer's nicotine content certification (105 CMR 665.010(C))
- Admitting a minor into an Adult-Only Retail Tobacco Store (105 CMR 665.020(B))

**Policies Subject To Local Regulation Fines**  
**(Section S.2)**

- Prohibition of the Sale of Blunt Wrap
- Ban on Smoking Bars
- Cigar Sales Regulated
- Tobacco Product Sales in Health Care Institutions
- Tobacco Product Sales in Educational Institutions
- Non-Residential Roll-Your-Own Machines Ban
- Maximum Number of Tobacco Sales Permits
- No New Tobacco Retailer Near Schools
- No New Tobacco Retailer Near Existing Permit Holder
- Mass. Department of Revenue license(s)
- Retailer possessing, holding, keeping prohibited flavor products
- Local Tobacco Sales Permit Requirement for retailers who are neither Smoking Bars nor Retail Tobacco Stores

Permit suspensions and permit revocations are calculated using the total number of a retailer's violations, combining those violations that receive state-mandated fines and those that receive local fines. Where there is a difference in permit suspension periods, the longer period shall apply.

3. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36) month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Sales Permit.
4. Failure 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.
5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple tobacco product sales permit suspensions shall not be served concurrently.
6. The Southborough Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Southborough Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
7. For purposes of such fines, the Board of Health 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.

**T. Non-Criminal Disposition:**

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.

**U. Separate Violations:**

Each day any violation exists shall be deemed to be a separate offense. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

**V. Enforcement:**

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

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

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

**W. Severability:**

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

**X. Effective Date:**

This regulation shall take effect on \_\_\_\_\_, 2022.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

## **Town of Southborough**

### **Noise Pollution Guidance**

According to the Town of Southborough's noise bylaw (article 26), the Board of Health and Police have authority to investigate noise pollution complaints and enforce its law. The noise standards are as follows:

#### **SECTION 1: POLICY**

##### **Exterior Noise Standards**

Unless further defined by standards within the bylaw, it shall be unlawful for any person at any location within the area of the Town to create any loud noise, or to allow the creation of any loud noise, on property owned, leased, occupied or otherwise controlled by such person, which causes an unreasonable disturbance beyond the property line that disturbs the peace.

##### **Homeowner Work Noise Standards**

Noise associated with Homeowner work is allowed between 7:00 AM and 8:00 PM on weekdays, 8:00 AM and 9:00 PM on Saturdays, Sundays and Holidays.

##### **Contracted Work Noise Standards**

Noise associated with Contracted Work is allowed between 7:00 AM and 7:00 PM on weekdays and 8:00 AM and 6:00 PM Saturdays. Contracted Work shall not be allowed on Sundays or Holidays.

Any work that generates an unreasonable noise disturbance beyond the property line with a New Construction Permit or Demolition Permit is only allowed between 7:00 AM and 6:00 PM on weekdays and 8:00 AM and 2:00 PM Saturdays. This activity shall not be allowed on Sundays or Holidays.

#### **SECTION 2: PROCEDURES FOR RESIDENTS**

1. Good Neighbor Policy. When citizens have complaints about any sound, whether it is covered by a specific law or not, all agencies that regulate noise in Southborough advise people to attempt to discuss the issue directly with the person or entity producing the sound in order to try and achieve a solution.
2. Allow Time for Resolution. Give the person or entity an appropriate time frame to do something about it. If the situation hasn't changed after that time, it may then be necessary to contact the appropriate authority that regulates or limits the particular noise source.
3. Contact the Town of Southborough. Noise complaints may be filed in two manners:
  1. Nuisance Complaint Form Online - Please fill out pertinent information related to the noise complaint online by visiting <https://www.southboroughtown.com/health-department/webforms/nuisance-form>
  2. Phone call - Please see list of phone numbers below to call, categorized by the appropriate noise type.

Noise	Authority	Contact Information
Industrial Stationary Commercial/Business	Board of Health	1. Online: <a href="https://www.southboroughown.com/health-department/webforms/nuisance-form">https://www.southboroughown.com/health-department/webforms/nuisance-form</a> or call 508-481-3013
Contracted Work	Police	508-485-2121
Residential Property	Police	508-485-2121
Residential Property (Multi-Unit)	Police	508-485-2121
Public Property	Police	508-485-2121

### SECTION 3: VIOLATIONS AND PENALTIES.

1. Any person or business who violates any provision of town bylaw (Article 26), if found responsible, may be fined as follows:
  - a. A warning for first offense.
  - b. \$50 for the second offense within 180 days of first offense.
  - c. \$100 for the third offense within 180 days of the preceding offense.

### SECTION 4: NOISE COMPLAINT PROCEDURES FOR BOARD OF HEALTH OFFICIALS

1. Commence investigation. Upon receipt of noise pollution complaint pertaining to stationary industrial or commercial noise, a Board of Health official will commence investigation. As the Town of Southborough's noise bylaw encompasses unreasonable disturbance beyond the property line that disturbs the peace, all complaints will be investigated. Investigation may include obtaining information from both the Complainant and Responsible Party (and is not limited to):
  - Location of noise complaint
  - Date(s) and time(s) of noise complaint
  - Media of noise (audio and/or video)
  - Sound measurement.<sup>1</sup> If needed for investigation and based on their discretion, the Board of Health may elect to conduct their own sound measurement. Additionally, the Board of Health may request the potential Responsible Party to obtain a sound study by an independent sound expert.
    - Sound level meters
      - The American National Standards Institute (ANSI) Standard S1.4-1983, "Specifications for Sound Level Meters" sets performance and accuracy tolerances according to three levels of precision: Types 0, 1, and 2. Type 0 is used in laboratories, Type 1 is used for precision measurements in the field, and Type 2 is used for general-purpose measurements. Sound level measurements from smart phone applications are not reliable and shall not be considered or reviewed for any purposes.

- Settings
  - Sound level meter response settings must be set in accordance with the particular noise that is measured. The sound level meter shall be set to slow response for continuous noise sources and fast response for noise with rapid onset and decline.
  - For most noise sources, compliance is assessed on the A-weighted relative sound pressure level.
- Calibration
  - To ensure measurement accuracy, all instruments must be calibrated according to the manufacturer's instructions. In addition, field calibration shall be performed prior to and after each use and whenever temperature and/or relative humidity changes significantly.
- Measurements with a sound meter
  - The inspector or department investigating the sound determines the appropriate period of time over which to take the measurement. If a group of sources on one property is contributing to the noise issue and are all under the control of the property owner, the group shall be treated as a single source and for compliance purposes the noise level shall be measured with all sources operating unless the owner can provide visual and/or written documentation that proves the sources are incapable of operating either simultaneously or as correctly calculated using standard methods.
- Measurements of Audibility (without a Sound Level Meter)
  - Take note of any plainly audible sounds.
- Measurement location.<sup>1</sup>
  - General
    - Measurements shall always be performed at a location safe for the inspector. If ladders must be used to access an appropriate measurement location, guidelines for safe ladder use must be employed. Telescoping boom poles and microphone extensions may be used to assess areas that would otherwise be hazardous for an inspector to access.
    - If a safe location for assessing sound is not available, the responding department has the discretion to investigate the sound in an alternative way, including but not limited to: estimation using standard modeling or calculation techniques, based on analogous standards studies, or calculations using local measurements at nearby locations or review of third-party reports; the responding department also has the discretion to decline to investigate certain noise complaints if it is not possible to investigate safely, and/or if there is sufficient evidence that a public health hazard is not present.
  - Outdoor noise measurement location
    - Sound waves may bounce or be attenuated by walls, soundproofing, windows, vegetation, or other surfaces. Any outdoor measurements to evaluate compliance on residential, commercial, or industrial property shall take place not less than four feet above the ground, at least four and one-half feet distant from walls or similar large reflecting surfaces, and protected from the effects of wind and other extraneous sounds by the use of appropriate windscreens.

- The threshold distance is defined as the linear distance from a sound source within which sound must be evaluated for compliance purposes. For stationary noise sources the threshold distance is defined as the property plane at a point that intercepts the line of sight from the source to an existing human receptor.
    - Outdoor measurements taken beyond the threshold distance for a particular standard may be used for compliance purposes if the sound is measured within the line of sight of the source and the measured sound level is greater than that allowed by the law; however, measurements beyond the threshold distance for a particular standard that are lower than what is allowable may not be used to demonstrate compliance.
  - Time of day of measurement.<sup>1</sup>
    - Response and investigation
      - It is not required that noise investigations and sound measurements be conducted at the exact time of a noise complaint. In addition, except when approved by management at the enforcing department, the evaluation of noise sources relative to standards and limits shall be conducted during regular working hours, which differ among enforcing Departments.
    - Third party acoustical reports
      - Sound level measurements may be performed and submitted by experienced acoustical consultants for inclusion in a property or enforcement file. Measurements made by a third party may not be used for enforcement purposes.
2. Determine validity of noise pollution.<sup>1</sup> Based on the discretion of the Board of Health official, determine validity of the noise complaint. A Department's decision whether a noise source is a violation or not is up to the enforcing Department. Each enforcing agency has its own appeal process.
  3. Enforcement.<sup>1</sup> Enforcement is detailed by the noise bylaws. The enforcing agency has discretion to provide adequate time for property or business owners to hire consultants, find funding, install and/or implement a noise mitigation measure. Each enforcing agency has discretion to determine which noise cases will be investigated; a noise complaint may be referred to another city, state, or federal agency as appropriate. If a responsible party fails to comply with a Board of Health's decision that a violation exists, enforcement will proceed in accordance with the Board of Health's bylaw and may result in violations and penalties as detailed in the noise bylaws.
  4. Appeals.<sup>1</sup>
    - If a complainant does not agree with the Board of Health's decision to investigate a noise complaint or determination of regarding an investigated complaint, the complainant has the option of hiring a third party vendor. The enforcing Department will have the option to review the third party report and may reverse their decision or not.
    - If a Responsible Party does not agree with a Department's determination regarding an investigated noise violation, the Responsible Party has the option of hiring a third party vendor. The enforcing Department will have the option to review the third party report and may reverse their decision or not.
  5. Repeat Complaints.<sup>1</sup> Once a complaint is closed, new complaints from the same individual about the same location will not be investigated unless the complainant is able to provide evidence which would justify opening a new and substantially different complaint. In order to prevent abuse of the noise ordinance, unfair business practices, and/or harassment, if a second complaint is filed and it is



established that a violation does not exist, subsequent complaints will not be investigated unless it is deemed necessary by the responding Department (either the Board of Health or Police).

**Drafted by:** BOARD OF HEALTH

**Draft date:** 07/20/2022

**Revision date:** 08/30/2022

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Heather Alker, MD, MPH

Town of Southborough Public Health Director

#### **Reference**

1 - 2014. *San Francisco Police Code Article 29: Regulation of Noise Guidelines for Noise Control Ordinance Monitoring and Enforcement*. [ebook] San Francisco: City of San Francisco, pp.7 - 23. Available at: <<https://www.sfdph.org/dph/files/EHSdocs/ehsNoise/GuidelinesNoiseEnforcement.pdf>> [Accessed 20 July 2022].

June 13, 2022

Board of Health  
Town Hall  
Southborough, Massachusetts 01772

Reference:

16 Meadow Lane  
Southborough, Massachusetts  
EDC Job No.: 3715

Dear Board Members:

Please see attached Soil Absorption System Plan for the above referenced property. The subject lot has undergone extensive soil testing during the last year in order to support a Title 5 compliant Soil Absorption system, however many years ago a differently configured lot was presented to the Board for consideration of a Variance and that was denied finding that the situation did not manifest an injustice to the property owner. This current situation no longer requires a variance in order to properly site the Soil Absorption System, however we have uncovered an existing drain line that extends onto the property without benefit of a record easement. The current owner has no problem formalizing an easement in order for the drain line to remain in place as long as the Soil Absorption System is allowed to proceed to permit. In order to locate both a leaching area and a drain line in close proximity to each other EDC has designed a PVC liner in order to create an impermeable "curtain wall" that will separate the two features. The curtain wall will provide equal separation protection while allowing the municipal stormwater to continue to traverse through the property, otherwise the drain line would need to be relocated off the property which cannot be accomplished without another easement and likely requiring similar leaching area protections over another property.

Please review the SAS Plan and the curtain wall details planned for this property and allow this plan to advance to permit as designed. Thank you for your consideration.

Very truly yours,

ENGINEERING DESIGN CONSULTANTS, INC.

  
Peter Bernis

# TOWN OF SOUTHBOROUGH



## DEPARTMENT OF PUBLIC WORKS

147 CORDAVILLE ROAD – SOUTHBOROUGH, MASSACHUSETTS 01772-1802 – (508) 485-1210 – FAX (508) 983-7754

September 8, 2022

Chelsea Malinowski, Chair  
Southborough Board of Health  
9 Cordaville Rd., Lower Level  
Southborough, MA 01772

Dear Ms. Malinowski:

I am writing to provide input regarding your public hearing to be held on September 19, 2022 at 7:00PM with the Southborough Board of Health in reference to a Variance Request for the proposed soil absorption system at 16 Meadow Lane.

The Variance is sought in order to allow the continued use of a municipal storm drain which begins in Meadow Lane and extends onto the subject property. I understand that the Town has placed this municipal drain on the private property of the applicant without the benefit of a proper easement. Through conversations with the applicant and his engineering firm, the applicant will agree to place an impermeable barrier providing environmental protection between the soil absorption system and the drain piping. In addition, the applicant will allow for a proper recorded easement to the Town thus allowing the drain to remain in place, if this Variance is granted.

I ask that you seriously consider this Variance to avoid the discontinued use of this drain as we don't have a reasonable alternative.

Regards,

Karen Galligan  
Southborough DPW Superintendent

## Barbara Spiri

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**From:** Melissa Danza  
**Sent:** Monday, September 19, 2022 2:25 PM  
**To:** Heather Alker; Barbara Spiri; Peter Bemis; Dennis Costello  
**Subject:** Meadow Lane - septic

Good afternoon,

On request of the applicant, I wanted to send this brief email to discuss jurisdictional areas as they relate to the Conservation Commission, primarily the Wetlands Protection Act (WPA). I apologize for the late email and not a memo as I have been out unexpectedly and any typos as I've been struggling with a migraine.

In review of the plans, the site, and existing drainage along Meadow Lane, I would like to confirm that the discharge and subsequent infrastructure (piping, catch basins, etc) do not qualify as areas subject to protection under the WPA. Therefore, the only buffer zones jurisdictional to the Conservation Commission come from the adjacent Reservoir itself and not with infrastructure associated to the drainage.

According to the submitted plans, all piping that discharges into the adjacent wetland resource area (Reservoir) confirms the status of a stormwater outfall as part of a functioning stormwater system.

I only provide this clarification on jurisdictional areas as there are differing regulations regarding these type of items between Title V or applicable BOH regulations and the WPA or Southborough Wetlands Bylaw and at the applicants request to outline the differences and confirm that the outfall and infrastructure itself is related to the stormwater system is not considered a wetland resource area and/or area subject to protection.

Sincerely,

Melissa Danza, CESSWI  
Conservation Agent  
Town of Southborough  
9 Cordaville Road, Lower Level  
Southborough, MA 01772  
(508)-281-8984

**General Hours:**

Monday - Thursday: 8:00AM – 4:00PM

Friday: 8:00AM-12:00PM

Please call or email to make an appointment or confirm availability as I am frequently out of the office on inspections

*Please note that the Secretary of State has deemed e-mail a public record*



105.51

LOT 2B  
AREA=43,720 S.F.  
=1.004 AC.

280

283

GARAGE=284.0

TOF = 285.00  
BF = 276.00

PORCH

VENT -

—D-BOX

INSPECTION  
PORT

5' REMOVE  
& REPLACE

3-TRENCHES  
45' LONG

PROPOSED  
WATER SERVICE

283

284

40.2

MEADOW

LANE

7-4

... CMP

18" dia

19" 20"

100

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## **Southborough Board of Health**

### **Noise Pollution Policy**

#### **SECTION 1: PURPOSE**

The citizens of Southborough have a right to and should be ensured an environment free from excessive noise. These noise pollution procedures are enacted to minimize excessive noise which may jeopardize the health and welfare of its citizens or degrade their quality of life.

#### **SECTION 2: POLICY**

Boards of health have broad authority under the Commonwealth of Massachusetts law (M.G.L. Chapter 111, Sections 31C and 122) to investigate and control nuisance conditions. Local Board of Health's are empowered by the Commonwealth of Massachusetts Department of Environmental Protection (310 CMR 7.52) to take enforcement action against violators of the noise, odor and dust regulations (310 CMR 7.09-7.10).

The Board of Health endorses the policy adopted by the Commonwealth's Division of Air Quality Control (DAQC 90-001). The Department's existing guideline for enforcing its noise regulation (310 CMR 7.10) is being reaffirmed as follows:

A source of sound will be considered to be violating the Department's noise regulation (310 CMR 7.10) if the source:

1. Increases the broadband sound level by more than 10dB (A) above ambient, or
2. Produces a "pure tone" condition when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured both at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment operating hours. The ambient may also be established by other means with the consent of the Department.

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