



Board of Health Agenda

Date: November 18, 2020

Time: 2:00 PM

Location: Conducted by Remote Participation

1. Administrative

BOARD OF HEALTH MEETING AGENDA

Date: Wednesday, November 18, 2020

Time: 2:00pm

Location: Conducted by Remote Participation

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency, the July 29, 2020 public meeting of the Arlington Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

Public access to this meeting shall be provided in the following manner:

Real-time public comment can be addressed to the Board of Health utilizing the Zoom virtual meeting software for remote participation. This application will allow attendees to request an opportunity for public comment, and allow the Board Chair to grant attendees the opportunity for public comment. Attendees can use either phone or computer to participate in the meeting. Public comment can also be sent in advance of the meeting by emailing the Board of Health at boh@town.arlington.ma.us by no later than 5pm on July 28, 2020. Submitted public comment will be read into the record at the appropriate points in the meeting.

Zoom Login instructions:

Instructions and the meeting link for this specific meeting can be found on the Board's agenda and minutes page or on the Town's meeting calendar. The meeting registration information is listed below. When attendees enter the meeting, they will be placed into a virtual waiting room. Attendees will be admitted into the meeting from the waiting room at the start of the meeting.

Please register in advance for this meeting:

<https://town-arlington-ma-us.zoom.us/joining/register/tJYqd-CprziH9IEA1WE1DhKgtUNvdMkSoPq>

After registering, you will receive a confirmation email containing information about joining the meeting.

On this agenda:

2. Acceptance of Meeting Minutes from October 14, 2020
3. COVID-19 Situational Update

4. Public Health Nurse Update

5. HEARING:

REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE
DELIVERY PRODUCTS

6. UPDATES:

Environmental Health

7. UPDATES:

Restaurants

PUBLIC COMMENT

Adjourn



Town of Arlington, Massachusetts

Acceptance of Meeting Minutes from October 14, 2020

ATTACHMENTS:

Type	File Name	Description
▣ Reference Material	10142020_Minutes_Board_of_Health_Draft.pdf	10142020 Minutes Board of Health



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

BOARD OF HEALTH MEETING MINUTES

Date: Wednesday, October 14, 2020
Time: 2:00pm
Location: Conducted by Remote Participation

In accordance with the Governor's [Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20](#) relating to the COVID-19 emergency, the August 19, 2020 public meeting of the Arlington Board of Health shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

Public access to this meeting shall be provided in the following manner:

Real-time public comment can be addressed to the Board of Health utilizing the Zoom virtual meeting software for remote participation. This application will allow attendees to request an opportunity for public comment, and allow the Board Chair to grant attendees the opportunity for public comment. Attendees can use either phone or computer to participate in the meeting. Public comment can also be sent in advance of the meeting by emailing the Board of Health at boh@town.arlington.ma.us by no later than 5pm on October 13, 2020. Submitted public comment will be read into the record at the appropriate points in the meeting.

Zoom Login instructions:

Instructions and the meeting link for this specific meeting can be found on the [Board's agenda and minutes page](#) or on the [Town's meeting calendar](#). The meeting registration information is listed below. When attendees enter the meeting, they will be placed into a virtual waiting room. Attendees will be admitted into the meeting from the waiting room at the start of the meeting.

Please register in advance for this meeting:

<https://town-arlington-ma-us.zoom.us/meeting/register/tJEucuiqpiotGtC0B-t9K1DEz2y1VVEtlynM>

After registering, you will receive a confirmation email containing information about joining the meeting.

On this agenda:

1. Administrative:

Hello, this is Natasha Waden, Arlington's Director of Public Health. Consistent with the Governor's orders suspending certain provisions of the Open Meeting Law and allowing us to adhere to social distancing requirements during the COVID-19 crisis, this Town of Arlington Board of Health meeting is being held virtually via Zoom for audio and video participation of Board Members and the public. When you entered this meeting, you were automatically muted. During this meeting you will be unmuted

individually as needed. These controls are in place to ensure that today's meeting is safe and effective. At this time, I would like to confirm that all members and persons anticipated on today's agenda are present and can hear me.

Board Members, when your name is called, please respond in the affirmative.

1. Marie Walsh Condon, Aye
2. Kevin Fallon, Aye
3. Ken Kohlberg, Aye

Health Department staff, please respond in the affirmative when your name is called.

1. Natasha Waden, Aye
2. Kylee Sullivan, Aye
3. Pat Martin, Aye
4. Jessica Kerr, Aye
5. Ashley Jean, Aye
6. Annette Curbow, Aye

Applicants and Representatives, do we have anyone on the call representing an application? N/A

Thank you everyone.

As stated, this Open Meeting of the Arlington Board of Health is being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the COVID-19 Virus.

In order to mitigate the transmission of the COVID-19 Virus, the Town of Arlington has been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor's Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting, allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will have one public comment period, at the end of the meeting. If you would like to comment during one of the public comment periods, please use the "Raise Hand" function if on a computer, or "Dial *9" if on the phone. When your name or phone number is called, and you are unmuted, please state your name and provide your comment. All attendees will be afforded 3 minutes for any comments.

For this meeting, the Board of Health is convening by telephone and computer conference via Zoom as posted on the Town's Website identifying how the public may join.

Only Health Department staff will be able to share their screen during this meeting. Board Members and Department Staff may be participating by video conference. Accordingly, please be aware that other folks may be able to see you. Anything that you broadcast may be captured by the recording.

All of the materials for this meeting are available on the Novus Agenda dashboard, and I recommend that Board Members and the public follow the agenda as posted on Novus unless otherwise noted. Members of the public are encouraged to provide written public comments.

Before we get to today's agenda, I am going to cover some ground rules for effective and clear conduct of our business and to ensure accurate meeting minutes.

Dr. Marie Walsh Condon, the Board Chair, will introduce each agenda item. After the item is presented, she will go down the list of Board Members, inviting each by name to provide any comment, questions, or motions. Please hold comments or questions until your name is called and you are unmuted.

For any response, please wait until the Chair yields the floor to you, and state your name before speaking.

Finally, each vote taken during this meeting will be conducted by roll-call vote.

Dr. Walsh Condon, can you please now review today's agenda. Floor yielded to Dr. Marie Walsh Condon.

Dr. Walsh Condon welcomed everyone to today's Board of Health meeting.

2. Acceptance of Meeting Minutes from August 19, 2020

Motion made by Ken Kohlberg, which was seconded by Kevin Fallon to accept the August 19, 2020 meeting minutes.

Dr. Marie Walsh Condon, Aye
Ken Kohlberg, Aye
Kevin Fallon, Aye
Motion approved 3-0 (unanimously)

3. COVID-19 Situational Update

Director Waden informed the Board that since the start of the pandemic there have been 378 confirmed COVID-19 cases in Arlington. She added that there has been a slight uptick in cases since the end of August which was expected with the re-opening of schools and business sectors across Town. Director Waden reported that Health Department staff meet on a weekly basis with both the public and private schools to answer questions and provide guidance. It was reported that contact tracing in Arlington is conducted by Health and Human staff members; the Town is not using the State's Contact Tracing Collaborative. In the last 14 days there have been eight (8) new confirmed cases in Arlington. Health Department representatives and Dr. Marie Walsh Condon attended a School Committee meeting recently to discuss COVID-19 as it relates to schools. Director Waden stated that one topic discussed was factors that would impact a district-wide shut down of in-person schooling. Director Waden reported that many factors would influence this decision, including both public health matters and operation capabilities within the school system.

Director Waden informed the Board that, as of last Monday, October 6, low risk communities across the Commonwealth, including Arlington, were permitted to enter Step 2 of Phase 3 of the State's Re-Opening Plan. In recent weeks Arlington has been identified as "green" on MDPH's COVID-19 map.

Inspector Kylee Sullivan reported that in addition to the 378 confirmed cases in Arlington, there have been 52 probable cases, 297 recovered residents, and 52 deaths.

Public Health Nurse Jessica Kerr reported that there was a COVID-19 case affiliated with the Stratton school that resulted in the 4th and 5th grades switching to remote learning. Similarly, a COVID-19 case affiliated with the St. Agnes School resulted in the 8th grade switching to remote learning.

Dr. Marie Walsh Condon asked the Board if they had any questions or comments.

Dr. Kevin Fallon stated he very much appreciated the updates provided by Health Department and thanked the Department for their hard work.

Mr. Ken Kohlberg stated the same.

4. Public Health Nurse Update:

Nurse Kerr informed the Board that the Health Department is finalizing plans for influenza clinic vaccinations later this fall. The Health Department partnered with the Council on Aging (COA) to provide vaccinations to seniors in Town. The COA has started conducting home visits for home-bound residents to get vaccinated. Additionally, the COA will be vaccinating seniors in the Arlington Housing Authority buildings starting next week. Finally, the COA partnered with Walgreens in East Arlington to provide another clinic for seniors.

Nurse Kerr reported that the Health Department is focusing vaccination efforts on children 18 years and younger. This focus is a result of Governor Baker's mandate that all MA children enrolled in child care, pre-school, k-12 (public and private), and post-secondary institutions must receive their flu vaccination by December 31, 2020. These clinics will be held on various days at different times to accommodate as many children as possible. They will require pre-registration and will be appointment-based. Finally, Nurse Kerr reported that the Health Department partnered with the Somerville Homeless Coalition to schedule a vaccination clinic for homeless residents.

Inspector Sullivan confirmed that the Walgreens clinic is specifically for seniors and will be held on Friday, October 30, 2020 from 9:00 AM to 2:00 PM.

Dr. Marie Walsh Condon asked the Board if they had any questions or comments.

Dr. Kevin Fallon stated he very much appreciated the updates provided by Nurse Kerr and thanked the Department for their hard work.

Mr. Ken Kohlberg stated the same.

5. Tobacco Discussion:

Inspector Padraig Martin reviewed Governor Baker's An Act Modernizing Tobacco Control which went into effect in November of 2019. Inspector Martin reported that prior to this law, the Board discussed updating the Town's Tobacco Sales Regulation. He asked if the Board would be interested in updating the Town's Regulation to encompass the updates from An Act Modernizing Tobacco Control.

Dr. Walsh Condon asked if An Act Modernizing Tobacco Control does not match the Town's Regulation then does the more stringent regulation supersede the other regulation. Director Waden and Inspector Martin confirmed that this is correct. Dr. Walsh Condon stated she is in favor of updating the Town's Regulation to match An Act Modernizing Tobacco Control. She reported that the Massachusetts Association of Health Boards (MAHB) likely has language for updating the regulation. Inspector Martin reported that MAHB has created model regulations for this purpose.

Dr. Fallon reported he was in favor of updating the Regulation.

Mr. Kohlberg confirmed that the Regulation would be updated to match An Act Modernizing Tobacco Control and reported that he was in favor of this.

Director Waden reported that the Health Department will draft the Regulation to present at the next Board meeting for a public hearing.

6. Environmental Health Update:

Director Waden introduced Annette Curbow, a new Health Compliance Officer with the Department. Director Waden reported that Inspector Curbow has been with the Department for a month and that she comes from the Boston Public Health Commission.

Inspector Martin informed the Board that Apothca opened to the public on September 17, 2020. He also reported that reports of rodent activity have slowed down recently. Finally, Inspector Martin reported that there was a mercury spill on a residential property due to leakage from an old mirror. The Health Department worked with the MA Department of Environmental Protection to ensure appropriate follow up and remediated was conducted. Dr. Fallon asked how mercury leaks from a mirror. Inspector Martin reported that the mirror was very old and so its seal broke over time; the mirror itself did not break.

7. Restaurant Updates

Inspector Martin informed the Board that there have not been any new restaurant closures since the last meeting. A new establishment called #1 Taste opened at the beginning on September where Tiki Inn was previously located (165 Mass Ave). The Department is currently reviewing 2 plan review applications for Venice Italian Kitchen (242 Mass Ave) and Food Link (108 Summer St).

8. Public Comments: None

Dr. Marie Walsh Condon concluded the Board of Health's agenda for the meeting and opened the floor to public comment.

Mr. Herbert Ang reported that he has no comment on the matters discussed during the meeting. He reported that he used to work in Arlington and was curious if there were any issues related to West Nile Virus in Town.

A Motion to adjourn was made by Dr. Fallon, seconded by Mr. Kohlberg.

Roll-call vote to close the Board meeting.

1. Marie Walsh Condon, Aye
2. Kevin Fallon, Aye
3. Ken Kohlberg, Aye

Meeting adjourned at 2:31 pm.



Town of Arlington, Massachusetts

COVID-19 Situational Update



Town of Arlington, Massachusetts

Public Health Nurse Update



Town of Arlington, Massachusetts

REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS

ATTACHMENTS:

Type	File Name	Description
Reference Material	Tobacco_Memo_11-13-2020.pdf	Tobacco Memo
Reference Material	Draft_Amendments_11-18-2020-Regulations_Restricting_the_Sale_of_Tobacco_and_Nicotine_Delivery_Products.pdf	Draft Amendments Regulation Restricting the Sale of Tobacco



Town of Arlington

Department of Health and Human Services

Office of the Board of Health

27 Maple Street

Arlington, MA 02476

Tel: (781) 316-3170

Fax: (781) 316-3175

To: Board of Health
From: Padraig Martin
Date: November 13, 2020
RE: Tobacco Update

On November 27, 2019 Governor Charlie Baker signed into law An Act Modernizing Tobacco Control. The Massachusetts Department of Public Health promulgated emergency regulations which went into effect on December 11, 2019. The Public Health Council updated and approved the new regulations (105 CMR 665) on February 12, 2020 and they have been in effect since March 6, 2020.

Enclosed is a copy of the Town's REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE DELIVERY PRODUCTS amended to reflect the changes.



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
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Tel: (781) 316-3170
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**REGULATION RESTRICTING THE SALE OF TOBACCO PRODUCTS AND NICOTINE
DELIVERY PRODUCTS**

A. STATEMENT OF PURPOSE:

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

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴;

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

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁵;

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

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC Office of Smoking and Health, *National Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009⁶;

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 cessation⁷

Whereas menthol makes it easier for youth to initiate tobacco use⁸;

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 2018⁹;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported¹⁰;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history¹¹;

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%¹²;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes¹³;

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

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

⁷ www.fda.gov/downloads/ucm361598.pdf, <https://tobacco.ucsf.edu/tpsac-gave-fda-what-it-needs-to-ban-menthol>

⁸ www.tobaccofreekids.org/assets/factsheet/0390.pdf

⁹ MA YRBS 2017

¹⁰ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

¹¹ Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

¹² Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit¹⁴ and high prices deter youth from starting.¹⁵ Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)¹⁶;

Whereas the sale of tobacco products and nicotine delivery products are incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

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

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010¹⁷; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;¹⁸

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009,

¹³ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

¹⁴ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

¹⁵ Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence*) 193 – 200. Retrieved from: <http://dcccps.nih.gov/TCRB/monographs/>.

¹⁶ TTB (2011). *Statistical Report – Tobacco (2011)* (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

¹⁷ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

¹⁸ SAMSHA, Analysis of data from the 2011 National Survey on Drug Use and Health

prohibited candy- and fruit-flavored cigarettes,¹⁹ largely because these flavored products were marketed to youth and young adults,²⁰ and younger smokers were more likely to have tried these products than older smokers;²¹

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,²² neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;²³

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;²⁴

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

B. AUTHORITY:

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

¹⁹ 21 U.S.C. § 387g.

²⁰ Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²¹ 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.

²² 21 U.S.C. § 387g

²³ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

²⁴ 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.

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” in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that does not sell food 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 Arlington 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.

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

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

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, 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 use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product or the provision of ingredient information.

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.

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

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

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

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

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 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.

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

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

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

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

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

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 Arlington; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar.

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.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed or sold to produce a characterizing flavor when added to any tobacco product.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes, any other tobacco product or nicotine delivery product.

D. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PROHIBITED:

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

2. Required Signage

- a. All retail establishments, including smoking bars and adult-only retail tobacco stores, 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, §§ 7 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) except in the case of smoking bars, 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.
- b. In addition to the notice required Section D 2. (a), a notice provided by the Arlington Board of Health shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco and nicotine delivery products at retail. Such notice shall state that the sale of tobacco products to person's under the age as outlined in Section D.1. is illegal.
- c. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

3. Identification: Each person selling or distributing tobacco or nicotine delivery products, or admitting entrance into a smoking bar or adult-only retail tobacco store, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is at the age stated in Section (D) (1) or older. Verification is required for any person that appears under the age of 27.

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

E. TOBACCO AND NICOTINE DELIVERY PRODUCT SALES PERMIT:

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

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

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

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

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

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

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

8. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new permit. No new

permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

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

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

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

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

13. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits: The maximum number of permits allowed shall be nineteen (19), reduced by the number of permits not renewed pursuant to Section E (14). New applicants for permits who are applying at a time when the total number of outstanding permits meets or exceeds the maximum number of permits allowed will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-serve" basis as permits are either not renewed or returned to the Arlington Board of Health.

14. Expiration of Waiting List: Any applicant that is currently on the waiting list as of January 1, 2018 may apply for a permit if and when an existing permit is either not renewed or returned to the Arlington Board of Health. However, this opportunity will expire on January 1, 2020, at which point the Arlington Board of Health will no longer maintain a waiting list. In addition, as of January 1, 2018, the Arlington Board of Health will no longer add applicants to the existing waiting list.

15. Any permit holder who has failed to renew an existing permit within 30 days of expiration will be treated as a first-time permit applicant.

16. A purchaser of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or nicotine delivery products. An owner of a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit that intends to change the physical location of the business in Arlington must notify the Board of Health in writing

thirty (30) days before such change of location occurs. The permit will be reissued reflecting the continuation of said business at the new address. Any permit holder who has failed to notify the Board of Health in writing thirty (30) days before changing the physical location of the business will be treated as a first-time applicant.

F. CIGAR SALES REGULATED:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars.
2. This Section shall not apply to:
 - a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
3. The Arlington Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. PROHIBITION OF THE SALE OF BLUNT WRAPS:

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

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

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

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; provided, however, that this subsection shall not apply to adult-only retail tobacco stores. Per 105 CMR 665.010(C), manufacturers shall provide documentation indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter.

J. FREE DISTRIBUTION AND COUPON REDEMPTION:

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

K. OUT-OF-PACKAGE SALES:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

L. SELF-SERVICE DISPLAYS:

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

M. VENDING MACHINES:

All tobacco and/or nicotine delivery product vending machines are prohibited.

N. NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES:

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

**O. PROHIBITION OF THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS
BY HEALTH CARE INSTITUTIONS:**

No health care institution located in Arlington shall sell or cause to be sold tobacco or nicotine delivery products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products or nicotine delivery products.

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

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

Q. VIOLATIONS:

1. 1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products. The violator shall receive:
 - a) In the case of a first violation, a fine of one thousand dollars (\$1000.00).
 - 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 Arlington, the violator shall receive:
 - a) In the case of a first violation, a fine of one hundred dollars (\$100.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - b) In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
 - c) In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.
 - d) The Board of Health reserves the right to revoke a Tobacco and Nicotine Delivery Product Sales Permit.

3. If a permit holder has obtained a permit or license from any other licensing or permitting authority within the Town of Arlington, the Board of Health shall notify such authority in writing of any violations of this regulation.
4. Refusal or failure to cooperate with inspections pursuant to this regulation may result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.
5. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended may be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.
6. The Arlington Board of Health shall provide notice of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefore in writing. After a hearing, the Arlington Board of Health may suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon suspension of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco and nicotine delivery products shall constitute a separate violation of this regulation.

R. NON-CRIMINAL DISPOSITION:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

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

S. ENFORCEMENT:

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

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

T. SEVERABILITY:

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

U. EFFECTIVE DATE:

This regulation shall take effect on November 18, 2020..

1. _____
Marie Walsh-Condon, MD
2. _____
Kenneth Kohlberg, JD, MPH
3. _____
Kevin Fallon, DVM

Amended on 4/11/2018
Amended on 09/11/2013
Amended on 12/03/2014
Amended on 03/15/2015
Amended on 04/11/2018



Town of Arlington, Massachusetts

Environmental Health



Town of Arlington, Massachusetts

Restaurants