

Article 22A
Regulation of the Town of Sharon Board of
Health Restricting the Sale of Tobacco Products

Approved Changes June 12, 2019
Amended March 27, 2024, Amended April 24, 2024

300-22A.1 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 the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin² and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,³ and that it is addiction to nicotine that keeps youth smoking past adolescence.⁴

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 smokers⁵;

Whereas, the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke, ⁶

Whereas cigars and cigarillos, can be sold in a single “dose”; and enjoy a relatively low tax as compared to cigarettes⁷.

Whereas, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking⁸

1 U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

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

3 U.S. Dep’t of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

4 *Id.* at 13 (Executive Summary).

5 *United States v. Phillip Morris*, 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).

6 Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from <https://www.samhsa.gov/data/>).

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

8 U.S. Dep’t of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) (www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

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;⁹

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;¹⁰

Whereas, ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019 to 2021;¹¹

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste”;¹²

Whereas the sale of tobacco products is 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, the New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students,¹³ which is incompatible with the sale of tobacco and nicotine products;

Whereas, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth¹⁴

9 Food and Drug Administration, *Fact Sheet: Flavored Tobacco Products* (2011), www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Dep’t of Health and Human Services, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 508, 539 (2012) www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

10 See fn. 3 at p. 85.

11 MA YRBS 2017

12 310 CMR 30.136

13 New England Commission on Higher Education, *Standards for Accreditation* at 24 (2021), <https://www.neche.org/resources/standards-for-accreditation>.

14 Ying-Chih Chuang et al., *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) *J. Epidemiol Cmty Health* 568 (2005) (doi: 10.1136/jech.2004.029041); Shelley D. Golden et al., *County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012*, 17 (101005) *Prev. Med. Rep.* (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Eric C. Leas et al., *Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States*, 179(3) *JAMA Intern Med.*, 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); JG Lee et al., *Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis*. *Tobacco Control*. Published Online First: 03 September 2021; LR Reitzel et al., *The effect of tobacco outlet density and proximity on smoking cessation*. *American Journal of Public Health*. 2011, 101(2):315-320; L Henriksen et al., *Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools?* *Preventive Medicine*. 2008, 47(2): 210-4.

Whereas, the density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;¹⁵

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;¹⁶

Whereas, policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;¹⁷

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”¹⁸.

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

300-22A.2 Authority

This regulation is promulgated pursuant to the authority granted to the Sharon Board of Health by Massachusetts General Laws c. 111, §31 which states "Boards of health may make reasonable health regulations".

15 LJ Finan et al., *Tobacco Outlet Density and Adolescents' Cigarette Smoking: A Meta-Analysis*, 28(1) *Tob Control*. 27 (2019) (doi: 10.1136/tobaccocontrol-2017-054065); Abdel Magid HS et al., *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*, 66(4) *J. Adolescent Health* 423 (2020) (doi:10.1016/j.jadohealth.2019.09.004).

16 Siahpush M. et al., *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*, 124(9) *Pub. Health* 525 (2010) (doi: 10.1016/j. puhe.2010.04.010); Lee JG, et al., *Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study*, 71(5) *J. Epidemiol Cmty Health* 487 (2017) (doi: 10.1136/jech-2016-208475); D.O. Fakunle et al., *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*, *Ethn Health*. 1 (2019) (doi: 10.1080/13557858.2019.1620178).

17 Ribisl KM, et al., *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*, 19(2) *Nicotine Tobacco Res.* 239 (2017) (doi: 10.1093/ntr/ntw185); HG, Henry et al., *Tobacco Retail Licensing and Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019)*, 110 (4) *Am J. Pub. Health* 547 (2020) (doi: 10.2105/AJPH.2019.305512); A.E. Myers et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 *Prev. Med.* 67(2015) (doi: 10.1016/j.ympmed.2015.01.025).

18 *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

300-22A.3 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 M.G.L. c.270): An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that is not required to possess a retail food permit and does not sell food, beverages or alcohol, that does not have a 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 Sharon 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 product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain 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.

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, mint, menthol and wintergreen, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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 M.G.L. c. 64C, §1, Paragraph 1. Tobacco leaf in 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 issue 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 a person or group of persons who provides health care services and employs health care providers subject to licensing under this chapter; or a retail establishment that sells pharmaceutical goods and services and is subject to regulation by the board of registration in pharmacy. Health care institutions include but are not limited to hospitals, clinics, health centers, pharmacies, drug stores, doctors’ offices, and dental 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 state price, and before the application of any discounts or coupons.

Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products is not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

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 solely for 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 individual, 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.

Retail Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves, that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine.

Self-Service Display: Any display including an unlocked humidor regardless of size from which customers may select a tobacco product, as defined herein, without assistance from employee(s) or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or side stream 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 primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Massachusetts General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. “Smoking bar” shall include, but not be limited to, those establishments that are commonly known as “cigar bars” and “hookah bars”.

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, liquid nicotine, “e-liquids” or other 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 any product that has been approved by the United States Food and Drug Administration for the use as a tobacco use cessation product or for other medical purposes and which 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. A rolling paper with a characterizing flavor shall be considered a Tobacco Flavor Enhancer.

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.

300-22A.4 Sale of Tobacco and Nicotine Delivery Products

1. Retail Sales

A. Minimum Legal Sales Age

No person shall sell or provide a tobacco or nicotine delivery product(s) in any of its forms to any person under the minimum legal sales age. The minimum legal sales age in the Town of Sharon is twenty-one (21) years old.

2. Required Signage

- A. All retail establishments, **including smoking bars and adult-only retail tobacco stores** shall conspicuously post signage, in the form developed and made available by the Massachusetts Department of Public Health (DPH) and made available from the Sharon Board of Health. Such signage shall include: (i) a copy of Massachusetts General Law, chapter 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 twenty one (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 tobacco products are prohibited at all times.

Any additional signage as required by DPH shall also be posted. Such signage shall be posted conspicuously in the retail establishment, or any other place used to sell tobacco products at retail, in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

- B. The owner or other person in charge of a shop or other place used to sell hand rolled cigars must display a warning about cigar consumption in a sign at least fifty (50) square inches pursuant to 940 CMR 22.06 (2) (e).

3. Identification

- A. No retailer may sell tobacco and nicotine products to any person younger than twenty-one (21) years of age. Each retailer (person) shall verify the age of **every** purchaser of tobacco products by means of a valid government-issued photographic identification containing the bearer's date of birth and that the purchaser is twenty-one (21) years of age or older. Verification is required for any person under the age of twenty-seven (27).
- B. Each person admitting entrance into a smoking bar or adult-only retail tobacco store shall first verify the age of **every** person entering by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years of age or older.

- C. All retail sales of tobacco or nicotine delivery products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location. Examples of methods of sale which are not permitted include, but are not limited to, vending machines and self-service displays.

300-22A.5 Permit for Sale of Tobacco and Nicotine Delivery Products:

1. No person or firm shall sell or otherwise distribute or offer for sale tobacco and nicotine delivery products, as defined herein, within the Town of Sharon without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Sharon Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in the Town of Sharon are eligible to apply for a permit and sell tobacco and nicotine products, as defined herein, at the specified location in the Town of Sharon.
2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Town of Sharon Tobacco regulations. 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. Signing a false statement may be a reason for suspension or revocation of the permit.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer Licenses issued by the Massachusetts Department of Revenue, before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
4. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must be displayed conspicuously at the retail establishment.
5. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein.
6. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Sharon Board of Health annually and listed in their Schedule of Fees.
7. 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. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.
8. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the minimum legal age sales age three (3) times within the previous permit year, and the time period to appeal has expired. The permit holder may request a hearing in accordance with Section 300-22A.11 (1-3) of this regulation.

300-22A.6 Maximum Number of Tobacco & Nicotine Delivery Product Sales Permits:

1. At any given time, there shall be no more than five (5) Tobacco and Nicotine Product Sales Permits issued in the Town of Sharon. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
2. 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 Town of Sharon Board of Health, and the Board of Health shall, at their next meeting, under Tobacco Control, consider whether the maximum number of Tobacco & Nicotine Delivery Product Sales Permits should be reduced, and shall then vote whether to amend the maximum number of permits allowed in the Town of Sharon. If the Board of Health makes no changes to the existing cap, applications for a new permit shall be considered using procedures set forth below:
 - a. 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.
 - b. Applicants on the waiting list shall be responsible for ensuring up to date contact information has been provided to the Sharon Board of Health.
3. Sale of Business.
 - A. Notwithstanding a cap on the total number of permit holders, the seller of a business holding a valid Tobacco & Nicotine Delivery Product Sales Permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health, as required herein.
 - B. The purchaser shall apply for the transfer of the permit no later than thirty (30) calendar days after said purchase. The purchaser shall not sell tobacco product until the transfer of the permit is approved by the Board of Health; and
 - C. All fines and suspensions of the previous owner must be satisfied prior to the sale.
4. Retail Density
 - A. A Tobacco & Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant’s business premises.

- B. A Tobacco & Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of an existing retailer with a valid Tobacco & Nicotine Delivery Product Sales Permits as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco & Nicotine Delivery Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises.
- C. If the purchaser of a business with a valid Tobacco & Nicotine Delivery Product Sales Permit pursuant to 300-22A.6 (3) (A-C) changes the location of the business, the new location shall be subject to the retail density requirements of Section 300-22A.6 (4) (A-C).

300-22A.7 Prohibition of Smoking Bars

Smoking Bars are prohibited in the Town of Sharon.

300-22A.8 Prohibited Activities

1. Cigar Sales Regulated:

- A. 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 fifty cents (\$2.50) or more.
- B. 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 (\$5.00) or more.
- C. 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 The Town of Sharon.
- D. The Sharon 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.

2. Sale of Flavored Tobacco Products Prohibited:

- A. 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
- B. Retailers must obtain manufacturer documentation certifying that all products possessed, held, kept, sold or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E))

4. Nicotine Content in Electronic Nicotine Delivery Systems:

- A. 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 or smoking bars.
- B. Retailers must obtain manufacturer documentation verifying that all electronic nicotine delivery products possessed, held, kept, sold or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C))

5. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in the Town of Sharon.

6. Free Distribution and Coupon Redemption:

No person shall:

- A. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
- B. 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
- C. 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.

7. Out-of-Package Sales:

- A. 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, as defined herein, shall possess, hold, keep, sell or cause to be sold or distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

- B. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000 Massachusetts Hazardous Waste Regulations and must provide the Sharon Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage, or expiration of the product.
- C. 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.”
- D. No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

8. 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.

9. Vending Machines:

The sale or dispensing of tobacco and/or nicotine delivery products through vending machines is prohibited.

10. Non-Residential Roll-Your-Own Machines:

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

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

No health care institution located in the Town of Sharon 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.

12. Prohibition of the Sale of Tobacco Products by Educational Institutions:

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

300-22A.9 Incorporation of State Laws and State Regulations:

1. The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to 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 state regulations including but not limited to those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”); 940 CMR 22.00 (“Sale and Distribution of Cigars in Massachusetts”); 105 CMR 665.00, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

300-22A.10 Violations: Fining Structure and Enforcement

1. Violations

It shall be the responsibility of the Establishment, permit holder and/or business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate M.G.L. Ch. 270, §§ 6, 28, 29 and 105 CMR 665, the following penalties apply:

- A. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) 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 and Nicotine Delivery Product Sales Permit shall be suspended per 105 CMR 665.040(d), **for up to seven (7) 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 (\$2,000.00) shall be issued and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for up to **thirty (30) 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 (\$5,000.00) shall be issued and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for up to **sixty (30) consecutive business days. The Sharon Board of Health may alternatively revoke the Tobacco and Nicotine Delivery Product Sales Permit.**
- D. 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 and Nicotine Delivery Product Sales Permit

2. Suspension of Tobacco and Nicotine Delivery Product Sales Permit

- A. The Sharon Board of Health, or its designated Agent may, after providing an opportunity for a hearing, suspend the Tobacco and Nicotine Delivery Product Sales Permit for the sale of tobacco and nicotine delivery products.
- B. The Board of Health or its Agent shall give notice of the violation and hearing to the permit holder in writing.
- C. The notice shall specify violations for which the permit is to be suspended and that after providing an opportunity for a hearing, the permit shall be suspended if the Sharon Board of Health finds that the violation occurred.
- D. If no request for a hearing is filed within the seven (7) day period, the suspension of the Tobacco and Nicotine Delivery Product Sales Permit shall be imposed.
- E. A permit holder whose Tobacco and Nicotine Delivery Product Sales Permit has been suspended shall remove all tobacco products, as defined herein, from the retail establishment. Failure to remove all tobacco products, shall constitute a separate violation of this regulation.
- F. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.
 - i. If a permit holder whose Tobacco and Nicotine Delivery Product Sales Permit has been suspended engages in the sale or distribution of tobacco products, in addition to the monetary fines set above, they shall be subject to a fine of \$300 for each day a sale occurs and revocation of the Tobacco and Nicotine Delivery Product Sales Permit after notice and opportunity to be heard.

3. Revocation

- A. The Board of Health or its Agent may, after providing an opportunity for a hearing, order the revocation of a permit for:
 - 1. Serious or repeated violations of the requirements of this regulation;
 - 2. Interference with the Board of Health or its Agent in the performance of their duty;
 - 3. Keeping, submitting and/or and misleading or false records or documents required by these regulations.
- B. The Board of Health or its Agent shall give notice of the violation and the opportunity for a hearing to the permit holder in writing.

- C. The notice shall specify the specific reason(s) for which the permit is to be revoked and that the permit shall be revoked at the end of seven (7) days following service of such notice if the Board of Health finds that a violation occurred unless a written request for hearing is filed with the Board of Health by the permit holder within such seven (7) day period.
- D. If no request for hearing is filed within the seven (7) day period and the Board of Health finds that a violation occurred, revocation shall be imposed.

300-22A.11 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.

300-22A.12 Enforcement

1. Enforcement of this regulation shall be by the Board of Health of Sharon or its designated agent(s).
2. 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.
 - A. Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Sharon Health Department or its designated agent (s) in writing, naming the alleged violation, location, date and time of the violation and the Board or its designated agent shall investigate.

300-22A.13. 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.

300-22A.14. Effective Date:

This regulation shall take effect on March 27, 2024