

# LEGISLATIVE SUB-COMMITTEE MINUTES

April 19, 2018

**Present:** Robert Magovern - Chair  
George Bitzas – Vice Chair  
Rosemary Sandlin  
Cecilia Calabrese

**Absent:** Robert Rossi

**Also Present:** Councilors Mineo and Mercadante, Mayor Sapelli, Health Agent Kathy Auer, Beth Ceccarini, Board of Health Members Gladys Largay and Anne Marie LeGrand as well as the Tobacco Control Director and MMA Public Health Liaison DJ Wilson

**Called to Order:** Meeting was called to order by Chairman Magovern at 6:30pm in the Peirce Room at the Agawam Public Library, 750 Cooper Street, Agawam.

## AGENDA

### **1. Approval of Minutes dated April 17, 2018**

Motion to approve both the minutes was moved by Councilor Calabrese and seconded by Councilor Bitzas noting the revision from the original minutes that were sent out. The vote was 4 YES, 0 NO, 1 ABSENT (Councilor Rossi) approving the minutes.

### **2. Discussion of draft smoking ordinance.**

Please see the attached minutes taken by Beth Ceccarini, Principle Clerk for the Health Department.

Raising the legal age to 21 brings this in line with the legal age for alcohol and gambling. Health Agent Kathleen Auer presented the draft ordinance. DJ Wilson spoke about second hand smoke and the tobacco sales and on the controversial cigar pricing and flavoring of tobacco. Also spoke about cigars being taxes much lower than cigarettes. Raising prices keeps the extra money with the retailer. All Councilors agreed that public hearings should be put on the agenda for future meetings. Finance Chair Magovern thanked Mayor Sapelli and the Board of Health members for their attendance. The Councilors also thanked the Board of Health members for their comprehensive research on the thorough wording in the proposed ordinance.

Motion to recommend public hearings made by Councilor Calabrese and seconded by Councilor Bitzas. The vote was 4 YES, 0 NO, 1 ABSENT (Councilor Rossi)

### **3. Any other business that may legally come before the Committee.**

None.

### **4. Adjournment.**

Motion to adjourn was moved and seconded. The meeting was adjourned at 7:57pm.

Respectfully submitted,

Robert Magovern, Chair  
Legislative Committee



# Town of Agawam

## Board of Health

36 Main Street Agawam, Massachusetts 01001-1837  
Tel. 413-726-9207 Fax 413 726-9723

Gladys Fernandez-Largay, MD	- Chairman
Mary Jo Safford, NP	- Vice Chair
Anne Marie LeGrand, RN, MHS, PA-c	- Member
Kathleen Auer, REHS, CHO	- Health Agent
Sherry Petrucci, RN	- Public Health Nurse
Beth Ceccarini	- Secretary

Council Legislative Sub Committee meeting - April 19, 2018 - Agawam Public Library

Attendance: Councilors: Magovern, Bitzas, Mercadante, Calabrese, Sandlin and Mineo, Mayor Sapelli, Health Agent Auer, Board of Health Members Chairman Gladys Largay, Anne Marie LeGrand, and D.J. Wilson, Tobacco Control Director

Guest Speakers: Mayor Sapelli  
Health Agent Kathy Auer  
DJ Wilson, Tobacco Control Dir./Public Health Liaison for Mass. Municipal Assoc.

Documents distributed at meeting:

- ~ D.J. Wilson's credentials
- ~ Tobacco Policy Summary
- ~ Mass. Tobacco Control Program
- ~ Names and addresses of local businesses selling tobacco
- ~ Letters of support for the new legislation including letters from School Superintendent Lemanski, And Park & Recreation Director, Chris Sparks

Meeting Called to Order: 6:30 pm by Councilor Magovern

Mayor Sapelli spoke first and explained to the sub-committee why we are proposing new legislation for tobacco. Agent Auer spoke next and explained the full scope of the new regulations as opposed to the current legislation that does not include current smoking/vaping items that are available today.

The next speaker was D.J. Wilson. He explained new municipal tobacco policies in Boston and Springfield. He discussed permit limits, that reduction in total tobacco sales is the end game regarding the number of licenses the town should issue each year.

He then discussed the price of permits and how they vary from town to town in Mass. Flavor policies should be in the regulations. Flavors are now in products like tobacco, cigars, vapes, chew and e-juices to sell to a broader market of smokers. Minimum age restrictions should also be part of the new legislation FROM AGE 18 TO 21. The state provides free signage for businesses to put in their shops about legal purchasing age and smoking cessation helpline phone numbers. Blunt Wraps should also be part of the legislation with new products being sold from sheets of tobacco, folded thin and flavored that teens have become addicted to. Mr. Wilson also spoke about pharmacies that have stopped the sales of tobacco products in their stores such as CVS. He noted that in 164 Mass cities, pharmacies are no longer selling tobacco or E-cigarettes to the public. Pricing of cigars should also be in the new legislation with a minimum of \$2.50 per cigars or a minimum of \$5.00 for multi-packs.

The effects of second-hand smoke also should be in our legislation as non-smoking establishments have health benefits. The state banned smoking in schools, nursing homes and restaurants. Smart legislation would also extend to nicotine products such as E-

cigarettes, vaping products, and juul products. Mr. Wilson spoke about the new wave of products teens are using which is currently NOT regulated and there is NO current measurement of addiction to these products which could be detrimental in brain development.

Councilor Magovern asked the attending council members to ask questions or share concerns with the panel.

Councilor Bitzas wanted to know who was responsible for under-age sale fines: the owner or the employee of the business.

Councilor Calabrese asked about the responsibility of the second hand smoke: the land lord or the business owner. She also asked about the sale of individual cigars or cigarettes and the prices that could be charged.

Councilor Mercadante was concern about legal places to smoke and enforcement of legislation. He stated that the sidewalks, cars and town streets would be hard to inforce. The number of licenses was also a concern for all future businesses that choose to come to town and want to sell tobacco products in the future.

Councilor Sandlin asked about current establishments that sell tobacco products with KENO machines in them.

Councilor Mineo asked about fines given out by the Health Agent over the past few years. After the council's questions were answered the Mayor wanted to share some points of interest in the legislation wording.

- prohibiting smoking bars after legislation is passed
- prohibiting the locations on municipal properties
- changing the age of tobacco sales from 18 to 21 years old
- number of tobacco permits issued by the Town
- capping the number of tobacco permits to the starting number the first year of issuance after the new legislation.
- needs to include training for employees who actually sell tobacco
- fines paid by non-compliant businesses \$300/\$300/\$300
- yearly tobacco permit fees \$200.00 each

The Board of Health Chairman was asked to speak to the councilors. Dr. Fernandez-Largay thanked them for their time in attending such an important meeting. She explained how much information the board had to go through before coming up with the drafted legislation before the council. Dr. Largay told the councilors about the effects nicotine addiction has on the population especially the elderly, children and teens. She explained that the cost of health care has sky rocketed due to health issues of smokers and child born to smokers or drug addicts in every state over the past few years.

Councilor Magovern asked for the future topics for discussion about the new tobacco legislation wording:

- cost of fines/fees
- smoking in public places
- should amend current wording regarding prohibiting smoking on the Municipal Golf Course
- littering of cigarette butts
- actual number of permits that should be issued each year
- stressing to employers that training and education is MANDATORY for employees selling tobacco products
- compliance checks, compliance with smoking ordinances by businesses
- should hold a public hearings on the new legislation

All councilors agreed that public hearings should be put on the agenda for future meetings Councilor Magovern thanked Mayor Sapelli and the Board of Health members for their attendance. The councilors also thanked the Board of Health members for their comprehensive research on the thorough wording in the proposed ordinance.

Council Chairman Magovern adjourned the meeting at 8:00 pm

BOH/bc

# D.J. Wilson, Mass. Municipal Association



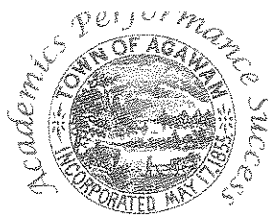
D.J. Wilson is the Tobacco Control Director and Public Health Liaison for the Massachusetts Municipal Association (<http://www.mma.org/>). The MMA is a non-profit local government membership organization to which all of the Commonwealth's 351 cities and towns belong. D.J. offers technical and legal assistance to municipalities on all aspects of tobacco control and testifies at public hearings on tobacco control measures before local legislative bodies. He participates in the DPH policy committee on tobacco issues. He also is a policy consultant working with DPH's Division of Prevention and Wellness to develop strategies to effect municipal-level policy and systems changes. At MMA, D.J. is a contributor to The Beacon, MMA's newsletter, and addresses MMA subcommittees as needed. He is a member of the Massachusetts Bar, received his MPA from Northeastern University and JD from the New England School of Law.

A A A

<http://hriainstitute.org/faculty/63-dj-wilson>

4/10/2018

# Agawam Public Schools



1305 Springfield Street Suite  
Feeding Hills, MA 01030-2198

ALLISON LECLAIR, Ed. D.  
Assistant Superintendent for Curriculum,  
Instruction, & Human Resources  
413) 821-0566

STEVEN P. LEMANSKI, M. ED.  
Superintendent of Schools  
(413) 821-0548  
Fax (413) 789-1835  
www.agawam.org

ROBERT CLICKSTEIN, M.B.A.  
School Business Administrator  
(413) 821-0560

April 19, 2018

Dear Legislative Subcommittee Members:

As Superintendent of Schools for the Agawam Public Schools, I want to express my concern regarding the current age requirement of the Smoking Ordinance.

Over the past 10 years, we have witnessed a noticeable decrease in those high school students who smoke. However, this past year we have seen a marked increase in students using electronic devices and Liquid Nicotine Containers to smoke or to achieve the effect of nicotine.

In recent years, some of our high school students were using vapor devices. Students using these devices were easy to detect due to the device producing a large amount of vapor. When used in a car, the vapor is released when the student opens the car door to exit. Again, this is easy to observe if the student is using the device in the parking lot on the school campus.

The current rage amongst today's teens is to use a JUUL device. This device can produce a nicotine high and can be hidden in the palm of the hand. Unlike the older vapor device, a JUUL does not produce a vapor. Since December 2018, Agawam High School has reported an increase in the use of this device by our students. This device allows students to sit in the back of a classroom, palm the device, put it up to their mouth, and inhale without the teacher observing anything out of the ordinary. In the meantime, the student receives an immediate high.

Tremendous progress has been made over the years in stamping out smoking with a noticeable decrease occurring. We are now faced with a nicotine delivery device that will increase the number of teens using and becoming addicted.

As the leader of our schools, I implore you to keep these devices and other tobacco products out of the hands of our children. We, as adults and leaders, must take the necessary steps to keep our children healthy and safe. We must constantly be on guard to the outside influences that attempt to lure our children into vices, to which they are easily attracted.

Thank you for your time and consideration of this request. Your decision is an important factor in the future health and well-being of our children.

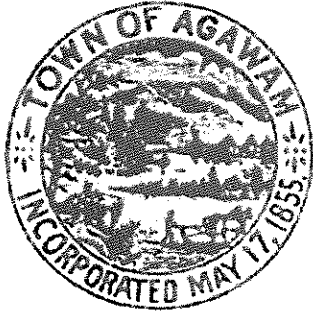
Sincerely,

Steven P. Lemanski, M.Ed.  
Superintendent of Schools

af

c: School Committee  
Mayor Sapelli

*"Put Children First"*



**Town of Agawam**  
Parks & Recreation Department  
1000 Suffield Street  
Agawam, MA 01001  
Tel (413) 821-0513 \* Fax (413) 821-0637

April 18, 2018

Kathleen E. Auer, Health Agent  
36 Main Street  
Agawam, MA 01001

Dear Kathleen,

I am writing to support the proposed changes to the Regulations of the Agawam Board of Health Restricting the Sale of Tobacco Products. The sale of tobacco and tobacco related products should be restricted to adults.

Safeguarding children and adolescents from access to tobacco and tobacco related products is an important health and safety concern that I support.

Sincerely,

Christopher Sparks  
Director of Parks & Recreation

April 12, 2018

Dear City Council Sub Committee Members:

I am an Agawam resident who asks you to please give support to the proposed tobacco regulations being heard in front of the council this evening. Tobacco use is rampant in Agawam and the number of youth who abuse tobacco products is alarming. We need to do our part as members of the community, and help to ensure that our children are not introduced to tobacco too soon.

The regulations proposed will help keep cheap, sweet and easy to get products out of the hands of our youth. I want to live in a community that cares about my health, and the health of those around me. Adopting comprehensive regulations will make Agawam a better place for us all and together, we can help get the tobacco industry targeting out of Agawam.

Sincerely,

Nicholas Rau

102 Country Road Agawam Ma

April 12, 2018

Agawam City Council Sub Committee Members:

My name is Allison; I am an Agawam resident and parent. I am also a teacher who works with teens every day and who cares about health issues such as cancer and youth tobacco use. I am writing to express my support for the proposed tobacco regulations the committee is looking at this evening.

The medical evidence on tobacco use is clear. Tobacco products are the single most preventable cause of premature death and disability in the United States and in Massachusetts today. In my line of work, I strongly believe that I have a special obligation to promote public health whenever possible and strongly discourage the tobacco industry's tactics used to hook our youth on tobacco products by making them cheap, sweet and easy to get.

In recent years, a growing number of cities and towns across Massachusetts have adopted similar, sometimes even stricter tobacco regulations to help keep its community members safe. I strongly urge you to support the proposal and adopt the regulations to help ensure a healthier Agawam for all of us.

Thank you for your consideration of this request.

Allison

Barry St. Feeding Hills Ma



**ATTN: City Council Sub-Committee Members**

April 8, 2018

To Whom It May Concern,

I am writing to express my support for the proposed *ORDINANCE AMENDING THE CITY OF AGAWAM'S CODE CHAPTER 149 "SMOKING AND TOBACCO PRODUCTS"*; I believe anything that you can do to further advance and protect the health of the residents of Agawam – most notably its youth - is a positive step forward.

I also want to recognize the Board of Health's efforts and would like to take this opportunity to thank you for your hard work and dedication to the residents of Agawam.

Sincerely,

Daniel Moriarty  
88 Country Road, Agawam

EXHIBIT A

**ARTICLE 1**  
**PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES**

**§149-1 Authority**

This ordinance is promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth.”

**§149-2 Definitions**

As used in this ordinance, the following words shall have the following meanings, unless the context requires otherwise.

**Compensation**

Money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

**E-Cigarette**

Any electronic device, not approved by the United States Food and Drug Administration, 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 any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, e-hookah or under any other product name.

**Employee**

An individual or person who performs a service for compensation for an employer at the employer’s workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer’s workplace for more than a *de minimus* amount of time.

**Employer**

An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the town of Agawam.

**Enclosed**

A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

**Municipal building**

Any building or facility owned, operated, leased or occupied by the municipality.

**Outdoor space**

An outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

**Retail tobacco store**

An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and 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 as required by the Agawam Board of Health.

**Smoking (or smoke)**

The lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

**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".

**Workplace**

An indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer; other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 or 105 CMR 661, the definition contained in this regulation shall control.

### **§149-3 Smoking Prohibited**

- a) It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
- b) Smoking is hereby prohibited in Agawam in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-Free Workplace Law”).
- c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
  1. smoking bars whose operators have newly applied after the date these regulations take effect;
  2. nursing homes;
  3. hotels, motels, B&B rooms;
  4. in all outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns;
  5. public transportation, bus/taxi waiting areas.
  6. on all town-owned playgrounds, parks, beaches, ballfields or any other recreational facility future or existing with structures, improved paths, parking areas or other maintained improvements. Also included are all municipal buildings, future or existing, and their grounds, including but not limited to, the Town Hall, Senior Center, Town Hall Annex, Fire and Police Stations, Library, and Building Maintenance Facility.
  7. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

### **§149-4 Enforcement**

- a) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:
  1. \$100 for the first violation;
  2. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
  3. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- b) Each calendar day on which a violation occurs shall be considered a separate offense.
- c) This regulation shall be enforced by the Board of Health and its designees.

- d) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
- e) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
- f) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
- g) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

#### **§149-5 Severability**

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

#### **§149-6 Conflict with other laws regulations**

Notwithstanding the provisions of Section 3 of this regulation, nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

#### **§149-7 Reserved**

## **ARTICLE II** **SALE OR GIFTS OF TOBACCO PRODUCTS**

#### **§149-8 Definitions**

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

##### **Adult-only retail tobacco store**

An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum

legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Agawam Board of Health.

**Blunt Wrap**

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

**Business Agent**

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

**Characterizing flavor**

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

**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.

**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.

**Employee**

Any individual who performs services for an employer.

**Employer**

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

**Flavored tobacco product**

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

**Health Care Institution**

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

**Liquid Nicotine Container**

A bottle or other vessel which contains nicotine in liquid or gel form, whether or not combined with another substance or substances, for use in a tobacco product, as defined herein. The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended

for use in a tobacco product, as defined herein, if the cartridge is prefilled and sealed by the manufacturer and not intended to be open by the consumer or retailer.

**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.

**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 for solely personal consumption are not Non-Residential RYO machines.

**Permit Holder**

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

**Person**

Any 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.

**Self-Service Display**

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

**Schools**

Public or private elementary or secondary schools.

**Smoke Constituent**



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

### **Smoking Bar**

An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. 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 similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

### **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.

### **§149-9 Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited**

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Agawam is 21.

2. Required Signage:

- a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Agawam Board of Health. The

notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health. 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 50 square inches pursuant to 940 CMR 22.06 (2) (e).

- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Agawam Board of Health that discloses current referral information about smoking cessation.
- c. The owner or other person in charge of a shop or other place used to sell tobacco products that rely on vaporization or aerosolization, as defined herein as "tobacco products", at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and 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 (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, 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 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

#### **§149-10 Tobacco Product Sales Permit**

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

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Agawam regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any

and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.
4. A separate permit, displayed conspicuously, is required for each retail establishment selling tobacco products, as defined herein. The fee for which shall be determined by the Agawam Board of Health annually.
5. A Tobacco Product Sales Permit is non-transferable.
6. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
8. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the MLSA (§D.1) three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 4 of the Violations section.
9. Maximum Number of Tobacco Product Sales Permits.

At any given time, there shall be no more than **38** Tobacco Product Sales Permits issued in Agawam. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant.

#### **§149-11 Cigar Sales Regulated**

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
  - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.

- b. 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 Agawam.

4. The Agawam 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.

#### **§149-12 Sale of Flavored Tobacco Products Prohibited**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

#### **§149-13 Prohibition of the Sale of Blunt Wraps**

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

#### **§149-14 Free Distribution and Coupon Redemption**

No person shall:

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.
4. Sections 2 and 3 shall not apply to products, such as cigarettes, for which there is a state law prohibiting them from being sold as loss leaders and for which a minimum retail price is required by state law.

#### **§149-15 Out-of-Package Sales**

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.
2. A retailer of Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Agawam Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All retailers 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."

#### **§149-16 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

#### **§149-17 Vending Machines**

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

#### **§149-18 Non-Residential Roll-Your-Own Machines**

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

#### **§149-19 Prohibition of the Sale of Tobacco Products by Health Care Institutions**

No health care institution located in Agawam 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.

#### **§149-20 Prohibition of the Sale of Tobacco Products by Educational Institutions**

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

## **§149-21 Incorporation of Attorney General Regulation 940 CMR 21.00**

The sale or distribution of tobacco products, as defined herein, must comply with those provisions found at 940 CMR 21.00 (“Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts”).

## **§149-22 Violations**

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:
  - a. In the case of a first violation, a fine of three hundred dollars (\$300.00).
  - b. In the case of a second violation within 36 months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for 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 Product Sales Permit shall be suspended for sixty (60) consecutive business days.
  - d. In the case of four violations or repeated, egregious violations of this regulation within a 36 month period, the Board of Health shall hold a hearing in accordance with subsection 4 of this section and may permanently revoke a Tobacco Product Sales Permit.
2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.
4. The Agawam Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Agawam Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, 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, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

**§149-23 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.

**§149-24 Separate Violations** Each day any violation exists shall be deemed to be a separate offense.

**§149-25 Enforcement**

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

**§149-26 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.

**§149-27 Effective Date**

This regulation shall be effective as of July 1, 2018.