

**Regulation of the Chelsea Board of Health
Restricting the Sale of Tobacco Products**

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A. Statement of Purpose:

Whereas, there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;¹

Whereas, 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 smokers;⁵

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 cigarettes;⁷

Whereas, spitless tobacco sales have increased from 100,000 units a year in 2018 to over 700,000 units a year by 2023;⁸

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 Massachusetts Dept. of Public Health, *Updated Presentation: Monitoring the Impacts of MA Flavored Tobacco*, MA (2024).

Whereas, nicotine use in any form during adolescence can cause addiction and can harm parts of the brain that control attention, learning, memory, mood, and impulse control. Nicotine use may also increase adolescents' risk of future addiction to other drugs;⁹

Whereas, spitless tobacco, in particular nicotine salt packages, provides a discrete, cheap nicotine delivery system;¹⁰

Whereas, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;¹¹

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;¹²

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;¹³

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste;"¹⁴

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 youth;¹⁵

⁹ Campaign for Tobacco Free Kids, *The Rise of Products Using Synthetic Nicotine* (2021) (<https://assets.tobaccofreekids.org/factsheets/0420.pdf>)

¹⁰ Ibid.

¹¹ 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).

¹² 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.

¹³ See fn. 3 at p. 85.

¹⁴ 310 CMR 30.136

¹⁵ 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;¹⁶

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;¹⁷

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;¹⁸

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."¹⁹

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

B. Authority:

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

C. Definitions:

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

Adult-Only Retail Tobacco Store (also known as "Retail Tobacco Store" in MGL Ch. 270): An establishment that does not share space with another business, that has a separate entrance, that

¹⁶ 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).

¹⁷ 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).

¹⁸ 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/ntn/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 the 14 public health approaches for tobacco retailer reduction*, 74 Prev. Med. 67(2015) (doi: 10.1016/j.ypmed.2015.01.025).

¹⁹ *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

does not sell food, beverages or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Chelsea 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 tobacco, manufactured or packaged with loose and removable leaves or a 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.

Bona Fide Purchaser for Value: A bona fide purchaser is someone who exchanges value for property without any reason to expect irregularities in the transaction.

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

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

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

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

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

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

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

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

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

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

Employee: Any individual who performs services for an employer.

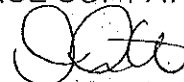
Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

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

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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, doctors' offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that "liquid nicotine container" shall not include a sealed, prefilled and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

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

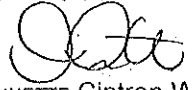
Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content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

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.

Oral Nicotine Pouches: Pre-portioned pouches containing nicotine, flavorings, fillers, and other ingredients, intended to be used between the cheek and gum to deliver nicotine, and do not require spitting.

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

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

Retailer: A person that operates a retail establishment.

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

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

Schools: Public or private elementary or secondary schools.

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 City of Chelsea; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars", "hookah bars" and "vape bars".

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

Tobacco Product: A product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that "tobacco product" shall also include any component, part or accessory of a tobacco product; and provided further, that "tobacco product" shall not include a product that has been approved by

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the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for the approved purpose.

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

D. No Tobacco Sales to Persons Born on or after January 1, 2004:

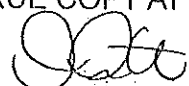
1. No person shall sell or provide a tobacco product to a person born on or after January 1, 2004.

2. Required Signage:

- a. All retail establishments, including adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available from the Chelsea Board of Health. Such signage shall include: (i) referral information for smoking cessation resources; (ii) a statement that sale of tobacco products, including e-cigarettes, to someone born on or after January 1, 2004, is prohibited; (iii) health warnings associated with using electronic nicotine delivery systems; and (iv) 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. The signage may be in a form developed and made available by the Massachusetts Department of Public Health.
- b. All 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 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."
- c. All adult-only retail tobacco stores that allow for onsite consumption of tobacco products 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 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 warn persons entering that smoking and vaping may be present on the premises and provide

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information concerning the health risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

3. Identification:

- a. Each person selling or distributing tobacco products shall first verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is born before January 1, 2004.
 - b. Each person admitting entrance into an 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 person is 21 or older.
4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

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

Health annually. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, much be displayed conspicuously at the retail establishment.

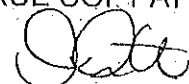
5. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation. Neither the permit holder nor their employees shall interfere with or obstruct an inspection.
6. 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.
7. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person born on or after January 1, 2004 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 of this regulation.
8. Maximum Number of Tobacco Product Sales Permits.
 - a. At any given time, there shall be no more than forty-two (42) Tobacco Product Sales Permits issued in Chelsea reduced by the number of permits not renewed pursuant to section 8(b) below.
 - b. As of the effective date of this regulation, any permit surrendered, revoked or not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the Chelsea Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.
9. Sale of Business.
 - a. Notwithstanding a cap on the total number of permit holders, the seller of a business holding a valid tobacco 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.

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- 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 products until the transfer of the permit is approved by the Board of Health; and all fines and suspensions of the previous owner must be satisfied prior to the sale.

10. Retail Density.

- a. As of the effective date of this regulation, no new adult-only retail tobacco stores shall be located within twenty-five (25) feet of an existing retailer with a tobacco product sales permit.
- b. A Tobacco 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.

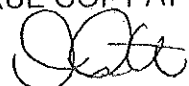
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F. Oral Nicotine Pouches:

Oral nicotine pouches can only be sold in adult-only retail tobacco stores.

G. Cigar Sales Regulated:

- 1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.90) or more.
- 2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at five dollars (\$5.80) or more.
- 3. This Section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Chelsea.
- 4. The Chelsea 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.

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H. Sale of Flavored Tobacco Products Prohibited:

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

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. Retailers must obtain from a manufacturer documentation as defined herein, indicating the nicotine content of each of their products sold by the retailer, expressed as milligrams per milliliter (105 CMR 665.010(C)).

J. Prohibition of the Sale of Blunt Wraps:

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

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

1. Distribute or cause to be distributed, any free samples of tobacco products, as defined herein;
2. Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or
3. Sell a tobacco product, as defined herein, to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product.

L. Out-of-Package Sales:

1. The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

2. Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, and must provide the Chelsea Board of Health with a written plan for disposal of said product, including disposal plans for any breakage, spillage or expiration of the product.
3. All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C. §§1471 through 1476 and 16 CFR §1700 et. Seq."
4. No permit holder shall refill a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

M. Self-Service Displays:

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

N. Vending Machines:

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

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

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

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

No health care institution located in Chelsea shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

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

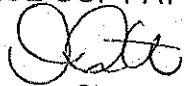
No educational institution located in Chelsea shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

R. Incorporation of State Laws and State Regulations:

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

S. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. In violations of this regulation, the following penalties apply:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1000.00) shall be issued, and if it is a sale to a person born on or after January 1, 2004, the Tobacco Product Sales Permit shall be suspended for three (3) consecutive business days.
 - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of 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.
 - 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 Sales Permit.
2. Failure to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
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. Multiple tobacco product sales permit suspensions shall not be served concurrently.

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4. A permit issued pursuant to this regulation may also be suspended, revoked or not renewed for any of the following causes:
 - a. Violation of the permit holder of any provision of state or local laws and/or regulations; or
 - b. Fraud, misrepresentation, false material statements, concealment, or suppression of facts by the permit holder in connection with an application for a permit or for renewal thereof.
5. The Chelsea 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 Chelsea Board of Health shall impose fines and suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.
6. For purposes of such fines, the Board of Health may 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.

U. Separate Violations:

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

V. Enforcement:

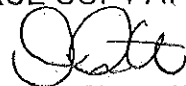
Enforcement of this regulation shall be by the Chelsea Board of Health or its designated agent(s).

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

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

V. 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.

W. Effective Date:

This regulation shall take effect on January 1, 2025.

/s/ Dean Xerras (present & voting)

/s/ Israel Molina (present & voting)

/s/ Mariolino Fernandes (present & voting)

/s/ Samantha Melaragno (present, not voting)

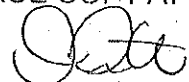
/s/ Jessica Wynns (not present)

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