

**Regulation of the Town of Manchester-by-the-Sea Board of Health
Prohibiting Smoking in Workplaces and Other Places**

Section A: Statement of Purpose

WHEREAS, secondhand tobacco smoke contains 7,000 chemicals, including hundreds of chemicals that are toxic and about 70 that cause cancer (e.g., formaldehyde, acetaldehyde, lead, nickel, chromium, arsenic);¹

WHEREAS, there is no risk-free level of exposure to secondhand smoke, and opening a window, sitting in a separate area, or using air filters or a fan does not get rid of secondhand smoke;²

WHEREAS, secondhand smoke causes coronary heart disease, stroke, and lung cancer in adults who do not smoke;³

WHEREAS, children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections such as pneumonia and bronchitis, middle ear disease, more frequent and severe asthma, respiratory symptoms, and slowed lung growth;⁴

WHEREAS, though they are not smokers themselves, an estimated 1,000 or more Massachusetts adults and children die each year from exposure to secondhand smoke;⁵

WHEREAS, exposure to secondhand aerosol from electronic cigarettes and other nicotine vape products is associated with increased bronchitis symptoms and shortness of breath⁶ and asthma attacks;⁷

WHEREAS, the electronic cigarette aerosol that users breathe in and exhale can contain harmful and potentially harmful substances including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds; cancer-causing chemicals; and heavy metals such as nickel, tin and lead.⁸

¹ U.S. Dep't of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

² U.S. Dep't of Health and Hum. Servs., *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (2006), <https://www.ncbi.nlm.nih.gov/books/NBK44324/>.

³ See Note 1.

⁴ Id.

⁵ MA Tobacco Control and Cessation Prgm., *Tobacco Statistics in Massachusetts and How Tobacco Use Impacts Your Health*, accessed May 2023 at <https://www.mass.gov/info-details/tobacco-statistics-in-massachusetts-and-how-tobacco-use-impacts-your-health>.

⁶ Islam et al., *Secondhand Nicotine Vaping at Home and Respiratory Symptoms in Young Adults*, 277 *Thorax* 663-68 (2022).

⁷ Bayly et al., *Secondhand Exposure to Aerosols from Electronic Nicotine Delivery Systems and Asthma Exacerbations among Youth with Asthma*, 155(1) *Chest* 88-93 (2019).

⁸ US Dep't of Health and Hum. Servs., *E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*, (2016), <https://www.cdc.gov/tobacco/sgr/e-cigarettes/index.htm>.

WHEREAS, exposure to secondhand smoke among nonsmokers is most prevalent among low socio-economic groups, those with MassHealth insurance, people with disabilities, and people who identify as LGBTQ:⁹

WHEREAS, an estimated 456,000 adult nonsmokers are exposed to secondhand smoke at home, work or other places for more than one hour per week;¹⁰

WHEREAS, secondhand smoke emitted from one area inside a building (including residential buildings) drifts under doors, through electrical outlets and pipe chases, through ventilation systems, and via hallways and stairways into other parts of the building;¹¹

WHEREAS, “during 2012-2016, an estimated annual average of 18,100 reported home structure fires started by smoking materials killed an average of 590 people annually, injured 1,130 per year, and caused \$476 million in direct property damage per year;”¹²

WHEREAS, “tobacco products are the most littered item on the planet containing over 7000 toxic chemicals, which leech into our environment when discarded, and approximately 4.5 trillion cigarette filters pollute oceans, rivers, city sidewalks, parks, soil and beaches every year;” and ¹³

WHEREAS, “cigarette filters contain microplastics and make up the second-highest form of plastic pollution worldwide.”¹⁴

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.”¹⁵

Now, therefore it is the intention of the **Town of Manchester-by-the-Sea** Board of Health to regulate the sale of tobacco products.

Section B: Authority

This regulation is promulgated under the authority granted to the **Town of Manchester-by-the-Sea** Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that “[b]oards of health may make reasonable health regulations.” It is also promulgated pursuant to

⁹ MA Tobacco Control and Cessation Prgm., *Non-Smoking Adults Exposed to Secondhand Smoke* (2015), <https://www.mass.gov/doc/massachusetts-adults-who-is-exposed-to-secondhand-smoke-factsheet-0/download>

¹⁰ Id.

¹¹ Wilson et al., *Tobacco Smoke Exposure in Children Who Live in Multiunit Housing*, 127(1) *Pediatrics* 85-92 (2011).

¹² Nat’l Fire Protection Ass’n, *Home Fires Started by Smoking* (2019), <https://www.nfpa.org/News-and-Research/Data-research-and-tools/US-Fire-Problem/Smoking-Materials>.

¹³ World Health Organization, *Tobacco: Poisoning Our Planet* (2022), <https://www.who.int/publications/i/item/9789240051287>.

¹⁴ Id.

¹⁵ *Druzik et al v. Board of Health of Haverhill*, 324 Mass. 129 (1949).

Massachusetts General Laws Chapter 270, Section 22(j) which states in part that “[n]othing 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.”

Section C: Definitions

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Adult-Only Retail Tobacco Stores (also known as a Retail Tobacco Store under 105 CMR 665.005): an establishment which 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 younger than 21 years old is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth where the establishment is located.

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

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 or more employees at one or more workplaces, at any one time, including the municipality.

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. Any space that does not qualify as an outdoor space, as defined herein, shall be deemed to be enclosed.

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.

Membership association: a not-for-profit entity that has been established and operates, for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to:

- (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having 1 or more affiliated chapters or branches incorporated in any state; or
- (ii) A not for profit establishment created and organized pursuant to M.G.L. Ch. 180 as a charitable corporation with a defined membership. A private club, including outdoor seating area, is not a place of public accommodation but rather distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02.

a corporation organized under chapter 180; or

- (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or

- (iv) a veterans’ organization incorporated or chartered by the Congress of the United States, or otherwise, having 1 or more affiliated chapters or branches incorporated in any state.

Except for a religious place of worship or instruction, an entity shall not be a membership association for the purposes of this definition, unless individual membership is required for all members of the association for a period of not less than 90 days.

Municipality: The Town of Manchester-by-the-Sea.

Municipal athletic fields and courts: any athletic field or court owned, leased, rented, or operated by the municipality including, but not limited to, all walkways and parking areas used for such athletic field or court.

Municipal beach: any beach owned, leased, rented, or operated by the municipality including, but not limited to, all walkways and parking areas used for beaches.

Municipal building: any building owned, leased, rented, or operated by the municipality.

Municipal forests and wildlands: any forest, woods, marshland, field, nature trails or other similar outdoor area owned, leased, rented, or operated by the municipality.

Municipal parks, playgrounds, and pools: any park, playground, or pools, owned, leased, rented, or operated by the municipality including, but not limited to, all walkways and parking areas used for such parks, playgrounds, or pools.

Nursing home: an institution that serves as a residential facility for patients and is licensed pursuant to MGL Ch. 111, §71 and includes convalescent homes, rest homes, charitable homes

for the aged, intermediate care facilities for persons with an intellectual disability and assisted living facilities.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering. This shall mean that the space has thorough, unobstructed circulation of outside air to all parts of the outdoor space, which shall be presumed to be present if: (a) the space has a ceiling and at least one half of the total surface area of the walls and other vertical boundaries of the space permits unobstructed flow of outside air into the space; or (b) the space has no ceiling and no more than two walls or other vertical boundaries of the space that obstruct the flow of air into the space exceed eight feet in height. A ceiling shall include any top or covering that is placed or may be placed over a space, or any other structure or arrangement above the space (including substantial coverage by umbrellas or awnings) that may impede the flow of air into the space, regardless of the type or nature of the materials or the partial or removable nature of the covering. Any outdoor space that has a structure capable of being enclosed, regardless of the materials or removable nature of the walls or covers, shall be regarded as an enclosed space when the walls or covers are in place.

All outdoor spaces shall be physically separated from an enclosed workspace. If doors, windows, sliding or folding windows or doors or other fenestrations form any part of the border to the outdoor space, the openings shall be closed to prevent the migration of smoke into the enclosed workspace. If the windows, sliding or folding windows or doors or other fenestrations are opened or otherwise do not prevent the migration of smoke into the workspace, the outdoor space shall be considered an extension of the enclosed workspace and subject to this section. Workspace or workspaces'', an enclosed area occupied by an employee during the course of his employment.

Smoking (or Smoke): the inhaling, exhaling, burning, or carrying of a lighted or heated cigar, cigarette, pipe or other tobacco or nontobacco products intended for inhalation in any manner or form, including the use of electronic cigarettes, electronic cigars, electronic pipes, or other similar products that rely on vaporization or aerosolization.

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 only; (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 younger than 21 years old; (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 appropriate authority in the city, town, or other legally constituted governmental unit within the Commonwealth in which the establishment is located; and (v) maintains a valid permit issued by the department of revenue to operate as a smoking bar. The term "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: a product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars,

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

Workplace: an indoor area, structure or facility or a portion thereof, at which one 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.

Section D: Smoking Prohibited

1. Smoking is prohibited in the municipality in accordance with M.G.L. Ch. 270, §22 and 105 CMR 661 (commonly known as the "Smoke-Free Workplace Law"). It shall be the responsibility of both the employer and the property owner to prohibit smoking and provide a smoke-free environment for all employees working in an enclosed workplace in accordance with the Smoke-Free Workplace Law.
2. Smoking is prohibited in all enclosed common areas in residential multi-unit buildings including but not limited to hallways, stairwells, laundry rooms, elevators, foyers, common rooms. It shall be the responsibility of the landlord, condominium trustees, or other entity having control of such enclosed common areas to prohibit smoking in all such areas.
3. The use of Electronic Nicotine Delivery Systems is prohibited wherever smoking is prohibited in accordance with M.G.L. Ch. 270, §22 and under these regulations.
4. **Smoking Bars:** Smoking Bars are prohibited in the Town of Manchester-by-the-Sea.
5. **Adult-Only Retail Tobacco Stores:** Adult-Only Retail Tobacco Stores are prohibited in the Town of Manchester-by-the-Sea.
6. Smoking is prohibited in the following locations:
 - a. Anywhere outside within **15 feet** of any entrance or exit of a municipal building;
 - b. Municipal Parks, Playgrounds and Pools;
 - c. Municipal Athletic Fields and Courts;

- d. Municipal Beaches;
- e. Municipal Forests and Wildlands;
- f. Municipal Campgrounds;
- g. Municipal Boat Cruises;
- h. Membership Associations, including but not limited, to private clubs, including outdoor seating area;
- i. Nursing Homes;
- j. Outdoor areas of restaurants, bars, taverns, and any other outdoor place where food or beverages are sold to the public and served to the public, or otherwise consumed or carried away by the public; and
- k. On public transportation, buses, taxis, and waiting/boarding areas for such transportation services.

SECTION E: ENFORCEMENT

1. 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:
 - a. \$100 for the first violation;
 - b. \$200 for a second violation occurring within twenty-four (24) months of the date of the first violation; and
 - c. \$300 for a third or subsequent violation occurring within twenty-four (24) months of the second violation.
2. Each calendar day on which a violation occurs shall be considered a separate offense.
3. This regulation shall be enforced by the Board of Health and its designees.
4. Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in G.L. c. 40, §21D.
5. 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.
6. 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 suspend or revoke any Board of Health-issued permit to operate and shall send notice of the suspension or revocation to the Department of Public Health.

7. Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department, or the equivalent.

SECTION F: SEVERABILITY

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

SECTION G: CONFLICT WITH OTHER LAWS OR REGULATIONS

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 local, state, or federal law.

SECTION H: EFFECTIVE DATE

This regulation shall be effective as of _____, 2024.

REGULATION OF THE MANCHESTER-BY-THE-SEA BOARD OF HEALTH RESTRICTING THE SALE OF MARIJUANA AND MARIJUANA PRODUCTS

A. Statement of Purpose:

Whereas in 2012, the Commonwealth of Massachusetts legalized the sale of medicinal marijuana and in 2016 legalized the sale of adult-use marijuana¹;

Whereas the Massachusetts Cannabis Control Commission was established to regulate the growth, production and sale of marijuana products to control for safety, sanitation and purity through a strict licensing system²;

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”³; and

Now, therefore it is the intention of the Manchester-by-the-Sea Board of Health to regulate the sale of marijuana products where such sales are not in compliance with the regulations of the Cannabis Control Commission, 935 CMR 501.000 *et seq.*

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Manchester-by-the-Sea 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:

Board: the Manchester-by-the-Sea Board of Health.

Cannabis or Cannabinoid: See the definition of Marijuana

Designated Agent of the Board of Health: the Director of Public Health and any person or entity, including health department staff, law enforcement officers, and designated agent of the Board to carry out the provisions of this regulation.

Edibles: A marijuana product that is to be consumed by humans by eating or drinking as defined in 935 CMR 5000.000.

Business Day: any day of the week, inclusive of Saturday and Sunday, during which a retail establishment is open.

¹ Massachusetts Gen. Laws ch. 94I and 94G

² Massachusetts Gen. Laws ch. 10, §76

³ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

Marijuana: all parts of any plant of the genus *Cannabis*, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol (THC) as defined in M.G.L. c. 94G, §1; provided, however, that "marijuana" shall not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Products: products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Permit Holder: Any person or business who applies for and receives a permit issued by the Board of Health, 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.

D. Unlicensed Sale of Marijuana or Marijuana Products Prohibited: Excluding establishments licensed by the Massachusetts Cannabis Control Commission, it shall be a violation of this regulation for any Permit Holder to sell or unlawfully provide marijuana or a marijuana product.

E. Enforcement and Penalties:

1. Any Permit Holder found in violation of this regulation shall receive a notice of violation from the Board or the Board's designated agent.
2. Any violation of this regulation shall be punishable by:
 - i. a fine of one thousand dollars (\$1000.00) in the case of a first violation;
 - ii. a fine of two thousand dollars (\$2000.00) in the case of a second violation within 36 months of a previous violation, and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for seven (7) consecutive business days; or
 - iii. a fine of five thousand dollars (\$5000.00) in the case of a third or subsequent violation within a thirty-six (36) month period, and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for thirty (30) consecutive business days.
3. Every day that a violation exists shall be deemed to be a separate offense. Separate but simultaneous violations shall be treated as separate violations. Multiple permit suspensions may not be served concurrently.

4. Any person who receives notice of a violation of this regulation may request a hearing before the Board. The request must be made in writing and filed within seven (7) days of the date the violation notice was received.
5. Upon accrual of four (4) violations of this regulation within a thirty-six (36) month period, or upon the commission of two (2) or more egregious violations of this regulation within thirty-six (36) months as determined by the Board, the Board may issue a notice of intent to revoke and shall hold a hearing in accordance with this regulation and, after such hearing, may permanently revoke any permits held by the violator, including any permits to sell tobacco products in Beverly.
6. Before suspending or revoking any permit issued by the Board, including a permit to sell tobacco products, the Board shall provide notice of the intent to suspend or revoke such permit, which notice shall contain the reasons therefor and shall establish a time and date for a hearing, to be held no earlier than seven (7) days from the date of the notice. The permit holder or their designee shall have the opportunity to be heard and shall be notified of the Board's decision and the reasons therefore in writing. If after hearing, the Board finds that a violation of this regulation occurred, the Board shall suspend or revoke the subject permit. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings concerning the same offense. Upon suspension or revocation of a permit, all permitted products must be removed from the retail establishment. Failure to remove such products shall constitute a separate violation of this regulation.
7. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to an additional suspension of all Board-issued permits for thirty (30) consecutive business days.
8. Complaints and Investigations.
 - i. The authority to inspect retail establishments operating in Manchester-by-the-Sea for compliance and to enforce this regulation shall be held by the Board and its designated agents.
 - ii. Any person may register a complaint with the Board or its designated agent to initiate an investigation and enforcement of this regulation by the Board.
 - iii. Refusal by a permit holder or the employee of a permit holder to cooperate with an inspection or investigation pursuant to this regulation shall result in the suspension of any Board-issued permit for thirty (30) consecutive business days.
9. The Board may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board shall not preclude enforcement through any other lawful means.
10. The fines and penalties established herein shall not limit the Board's ability to suspend or permanently revoke a permit when, in the discretion of the Board, the circumstances or events underlying any violation warrant such suspension or revocation.

F. 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.

G. Effective Date:

This regulation shall take effect on _____.

Board of Health Members

REGULATION OF THE TOWN OF MANCHESTER-BY-THE-SEA BOARD OF HEALTH PROHIBITING THE MANUFACTURE, SALE, OR DISTRIBUTION OF SYNTHETIC CANNABINOIDS

A. Statement of Purpose and Authority:

Whereas, delta-9-tetrahydrocannabinol (THC) is the chemical responsible for most of marijuana's psychological effects.¹

Whereas, hemp is defined as "the plant of the genus *Cannabis* and any part of the plant, whether growing or not, with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis or per volume or weight of marijuana product or the combined per cent of delta-9-tetrahydrocannabinol and tetrahydrocannabinol acid in any part of the plant of the genus *Cannabis* regardless of moisture content."²

Whereas, marijuana is defined as "all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including tetrahydrocannabinol as defined in section 1 of chapter 94C" of the Massachusetts General Laws; "provided, however, that 'marijuana' shall not include . . . (ii) hemp."³

Whereas, delta-8, delta-10, and other forms of THC are isomers of delta-9 and, except for trace amounts, are not found naturally in the plant cannabis, but are instead synthetically produced in laboratories.⁴

Whereas, the production of synthetic, hemp-derived products like delta-8 is not regulated by the federal government or in Massachusetts because the manufacture, sale or distribution of such products is not permitted under state or federal law; these products are schedule 1 controlled substances pursuant to the Controlled Substances Act.⁵

Whereas, synthetically produced THC products have not been evaluated or approved by the FDA for safe use in any context because there is variability in manufacturing processes, product labeling and amounts of THC concentrations, in addition to reports of hallucinations, vomiting, tremor, dizziness, anxiety and confusion.⁶

¹ Alina Bradford, *What is THC?*, LIVESCience (May 18, 2017), [available at https://www.livescience.com/24553-what-is-thc.html](https://www.livescience.com/24553-what-is-thc.html).

² G.L. c. 94C, §1.

³ G.L. c. 94C, §1.

⁴ Kristina Etter, *I Stand Corrected: The Truth About Delta-8 THC*, MEDIUM (March 17, 2021), [available at https://medium.com/seed-stem/i-stand-corrected-the-truth-about-delta-8-thc-e8085725ed9e](https://medium.com/seed-stem/i-stand-corrected-the-truth-about-delta-8-thc-e8085725ed9e).

⁵ <https://www.fda.gov/news-events/press-announcements/fda-issues-warning-letters-companies-illegally-selling-cbd-and-delta-8-thc-products>; [https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20\(CSA,and%20safety%20or%20dependence%20liability](https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20(CSA,and%20safety%20or%20dependence%20liability).

⁶ [https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20\(CSA,and%20safety%20or%20dependence%20liability](https://www.dea.gov/drug-information/csa#:~:text=The%20Controlled%20Substances%20Act%20(CSA,and%20safety%20or%20dependence%20liability).

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 public health by any rational means.”⁷

Therefore, in furtherance of its mission to protect, promote, and preserve the health and well-being of its residents, and pursuant to the authority granted to the Town of Manchester-by-the-Sea Board of Health pursuant to G. L. c. 111, §31, the Board of Health enacts this Regulation Prohibiting the Manufacturing, Sale, and Distribution of Synthetic Cannabinoids.

B. Definitions:

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

Board: The Town of Manchester-by-the-Sea Board of Health.

Designated Agent of the Board of Health: the Director of Public Health and any person or entity, including health department staff, law enforcement officers, and designated agent of the Board to carry out the provisions of this regulation.

Business Day: Any day of the week, inclusive of Saturday and Sunday, during which a retail establishment is open.

Permit Holder: Any person or business who applies for and receives a permit issued by the Board of Health, 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.

Synthetic Cannabinoid: Any cannabinoid that is altered or created by a chemical reaction. Synthetic Cannabinoids include but are not limited to delta-8 and delta-10.

C. Products Containing Synthetic Cannabinoids: It shall be a violation of this regulation for any Permit Holder to manufacture, distribute, or sell, or cause to be manufactured, distributed or sold, in the Town of Manchester-by-the-Sea any product containing a Synthetic Cannabinoid including, but not limited to delta-8 and delta-10.

D. Enforcement and Penalties:

1. Any Permit Holder found in violation of this regulation shall receive a notice of violation from the Board or the Board’s designated agent.
2. Any violation of this regulation shall be punishable by:

⁷ Druzik v. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949) (citing Lawrence v. Bd. of Registration in Med., 239 Mass. 424, 428 (1921)).

- i. a fine of one thousand dollars (\$1000.00) in the case of a first violation;
 - ii. a fine of two thousand dollars (\$2000.00) in the case of a second violation within 36 months of a previous violation, and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for seven (7) consecutive business days; or
 - iii. a fine of five thousand dollars (\$5000.00) in the case of a third or subsequent violation within a thirty-six (36) month period, and a suspension of any permit issued by the Board, including but not limited to a permit to sell tobacco products, for thirty (30) consecutive business days.
3. Every day that a violation exists shall be deemed to be a separate offense. Separate but simultaneous violations shall be treated as separate violations. Multiple permit suspensions may not be served concurrently.
4. Any person who receives notice of a violation of this regulation may request a hearing before the Board. The request must be made in writing and filed within seven (7) days of the date the violation notice was received.
5. Upon accrual of four (4) violations of this regulation within a thirty-six (36) month period, or upon the commission of two (2) or more egregious violations of this regulation within thirty-six (36) months as determined by the Board, the Board may issue a notice of intent to revoke and shall hold a hearing in accordance with this regulation and, after such hearing, may permanently revoke any permits held by the violator, including any permits to sell tobacco products in The Town of Manchester-by-the-Sea.
6. Before suspending or revoking any permit issued by the Board, including a permit to sell tobacco products, the Board shall provide notice of the intent to suspend or revoke such permit, which notice shall contain the reasons therefor and shall establish a time and date for a hearing, to be held no earlier than seven (7) days from the date of the notice. The permit holder or their designee shall have the opportunity to be heard and shall be notified of the Board's decision and the reasons therefore in writing. If after hearing, the Board finds that a violation of this regulation occurred, the Board shall suspend or revoke the subject permit. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings concerning the same offense. Upon suspension or revocation of a permit, all permitted products must be removed from the retail establishment. Failure to remove such products shall constitute a separate violation of this regulation.
7. Failure to comply with the terms of a permit suspension imposed pursuant to this regulation may subject the permit holder to an additional suspension of all Board-issued permits for thirty (30) consecutive business days.
8. Complaints and Investigations.

- i. The authority to inspect retail establishments operating in Manchester-by-the-Sea for compliance and to enforce this regulation shall be held by the Board and its designated agents.
 - ii. Any person may register a complaint with the Board or its designated agents to initiate an investigation and enforcement of this regulation by the Board.
 - iii. Refusal by a permit holder or the employee of a permit holder to cooperate with an inspection or investigation pursuant to this regulation shall result in the suspension of any Board-issued permit for thirty (30) consecutive business days.
9. The Board may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board shall not preclude enforcement through any other lawful means.
10. The fines and penalties established herein shall not limit the Board's ability to suspend or permanently revoke a permit when, in the discretion of the Board, the circumstances or events underlying any violation warrant such suspension or revocation.

E. Severability:

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

F. Effective Date:

This regulation shall take effect on _____ 2024

Regulation of the Town of Manchester-by-the-Sea Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas, there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;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 Law* (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, provide 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 Cmtty 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 The Town of Manchester-by-the-Sea Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Town of Manchester-by-the-Sea Board of Health by G.L. c. 111, §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 G.L. c. 270): An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that 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 The Town of Manchester-by-the-Sea Board of Health and applicable state licenses. Entrance to the establishment must be secure so

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/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.ypmed.2015.01.025).

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

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.

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 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.

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

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

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

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device

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

Employee: Any individual who performs services for an employer.

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

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

Health Care Institution: An individual, partnership, association, corporation or trust or 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: (i) from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and (ii) that is used to hold a soluble nicotine in any concentration; provided however, that “liquid nicotine container” shall not include a sealed, prefilled and disposable container of nicotine 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.

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.

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. This relates to flavor enhancers, see last sentence of Tobacco Product Flavor Enhancer definition. Adding this definition will permit banning flavored non-tobacco, non-nicotine wraps such as hemp wraps.

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

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

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

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

D. No Tobacco Sales to Persons [under Twenty-One (21) Years Old

No person shall sell or provide a tobacco product to a person [under twenty-one (21) years old

Required Signage:

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

1. Identification:

- a. Each person selling or distributing tobacco products shall first 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 that the purchaser is 21 or older'
- 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 21 or older.

E. Prohibition of Sales

1. No person, firm, corporation, establishment, or agency shall sell tobacco or nicotine products to anyone born on or after January 1, 2004

Any person, firm, corporation, establishment, or agency who or which violate any provision of this regulation and upon written notification shall be fined and suspended in accordance to the schedule set forth under the Regulation of the Town of Manchester-by-the-Sea Board of Health Restricting the Sale of Tobacco Products

F. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within without first obtaining a Tobacco Product Sales Permit issued annually by the Town of Manchester-by-the-Sea Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in the Town of Manchester-by-the-Sea are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in the Town of Manchester-by-the-Sea.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Town of Manchester-by-the-Sea 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 Town of Manchester-by-the-Sea Board of Health annually. All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also 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 under the age of 21 three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with subsection 6 of the Violations section.

8. 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.
- b. The purchaser shall apply for the transfer of the permit no later than (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.

G. Prohibition of Smoking Bars:

Smoking Bars are prohibited in the Town of The Town of Manchester-by-the-Sea.

H. Prohibition of Adult Only Retail Stores

Adult Only Retail Stores (also known as “Retail Tobacco Store” in G.L. c. 270): Are prohibited in The Town of Manchester-by-the-Sea

I. 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 (\$2.50) 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 (\$5.00) 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 the Town of Manchester-by-the-Sea.
4. The Town of Manchester-by-the-Sea 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.

J. Sale of Flavored Tobacco Products Prohibited:

No person, as defined herein, 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 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)).

K. 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 or smoking bars.

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)).

L. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in The Town of Manchester-by-the-Sea.

M. 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, through any multi-pack discount (e.g., "buy-two-get-one-free") if the sale reduces the price of each back to less than the listed or non-discounted price.

N. 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, as defined herein, shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or 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, Massachusetts Hazardous Waste Regulations.
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 with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

O. 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.

P. Vending Machines:

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

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

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

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

No health care institution located in The Town of Manchester-by-the-Sea 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.

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

No educational institution located in The Town of Manchester-by-the-Sea shall sell or cause to be sold tobacco products, as defined herein, including by any person or retailer on the property of an educational institution.

T. 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 G.L. c. 270, §§6, 6A, 7, 28, 29 and G.L. c. 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; and 105 CMR 665.00, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

U. 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. For violations of the sections of this regulation the violator shall receive:
 - 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 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 (\$2,000.00) 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 (\$5,000.00) shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
2. 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.
3. Failure to cooperate or interfere with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
4. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while their permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.
5. The The Town of Manchester-by-the-Sea 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 The Town of Manchester-by-the-Sea 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 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.

V. Separate Violations:

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

W. Enforcement:

Enforcement of this regulation shall be by the The Town of Manchester-by-the-Sea Board of Health or its designated agent(s).

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

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

X. 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.

Y. Effective Date:

This regulation shall take effect on _____, 2024.
