BOH MEETING MINUTES
10/4/2023

In attendance: Bridget Sweet, Chair; Timothy Cochrane Jr., Vice Chair; Jeffrey Harris, Member; Cathleen Liberty, Director; Ginny McNeil, Health Agent; Alisha Sullivan, Public Health Nurse; John Robertson, Shared Service Grant Regional Inspector; Epidemiologist Cassia Monteiro; Maureen Canesi, Administrative Assistant and Alan Earls, Editor Franklin Observer; Diane Legere, Relevant Food Safety Consultant

CALL TO ORDER: ►Chair Sweet called the Meeting to order at 5:00 pm.

APPROVAL OF MINUTES: ►September 6, 2023.
►MOTION to Approve the September 6, 2023 meeting minutes by Cochrane. SECOND by Harris. Sweet abstained. No discussion. ►ROLL CALL VOTE: Cochrane-YES; Harris-YES; ►VOTE: Yes-2, No-0, Absent-1.

NEW BUSINESS
Risk Study Presentation
Diane Legere, Food Safety Consultant for the Health Department, employee of Relevant presented a Risk Study Presentation which outlined risk study analysis results for the Town of Franklin. Through the NEHA-FDA RFFM Grant Program cycle, the town will be developing and implementing targeted intervention strategies aimed at mitigating the occurrence of out-of-control risk factors within each industry segment which include Nursing Homes, Elementary and Secondary Schools, Restaurants and Retail Food Stores.

Vote on the Tobacco Products and Smoking Regulation
►MOTION to adopt the Regulation of the Franklin Board of Health Restricting the Sale of Tobacco Products published and discussed at the 09/06/23 Board of Health meeting by Cochrane. ►SECOND by Harris. ►No discussion. ►ROLL CALL VOTE: Cochrane-YES; Harris-YES; Sweet-YES►VOTE: Yes-3, No-0, Absent-0.

Vote to adopt the Regulation of the Franklin Board of Health Restricting the Sale of Tobacco Products with an effective date of 1/1/2024.
►MOTION to adopt the Regulation of the Franklin Board of Health Restricting the Sale of Tobacco Products with an effective date of 1/1/2024 by Cochrane. SECOND by Harris.►No discussion. ►ROLL CALL VOTE: Cochrane-YES; Harris-YES; Sweet-YES►VOTE: Yes-3, No-0, Absent-0.

Metacomet Shared Service Grant Inspector Update
Regional Inspector John Robertson updated the board with the Regional Inspector Report for the month of September, 2023.

Metacomet Public Health Nurse Update
Public Health Nurse Alisha Sullivan updated the board with the Public Health Report for the month of September, 2023.

Metacomet Shared Service Grant Epidemiologist Update
Epidemiologist Cassia Monteiro updated the board with the Epidemiologist Report for the month of September, 2023.

CITIZENS COMMENTARY
Alan Earls of the Franklin Observer asked the Board what the status of the Franklin Foot SPA at 391 East Central Street. Health Director Cathleen Liberty stated that the business was ordered to shut down until violations there were addressed. She also stated that in response to such issues, she has developed and implemented more stringent regulation of massage businesses aimed at preventing abuses.

Meaghan Benson, via Google meet, asked the Board for a status update on the Migrant issue at the Best Western Hotel.Director Cathleen Liberty gave a brief update of the services DPH will be providing the Migrants.

ADJOURNMENT
►MOTION to adjourn AT 5:35 by Harris. SECOND by Cochrane. ►No discussion. ►ROLL CALL VOTE: Cochrane-YES; Harris-YES; Sweet-YES►VOTE: Yes-3, No-0, Absent-0.

Respectively submitted by: Maureen Canesi

Town of Franklin

HEALTH DEPARTMENT

355 East Central Street
Franklin, MA 02038
Phone: 508-520-4901 Fax: 508-520-4989

Bridget Sweet-Chair
Timothy Cochrane-Vice Chair
Jeffrey Harris-Member

Cathleen Liberty-Director
Ginny McNeil-Agent

BOARD OF HEALTH AGENDA
October 4, 2023

The Board of Health will be conducting the Board of Health meeting at 355 East Central St, **Conference Room**, 3rd floor at 5:00pm. The Public has the option of attending the meeting live at the Town Hall or dial into the meeting using the provided phone number (Cell phone or Landline Required) OR citizens can participate by copying the link (Phone, Computer, or Tablet required).

Please click on the link.

Join with Google Meet

meet.google.com/ife-usus-yot

Join by phone

(US) +1 413-648-7990 PIN: 167 951 244#

APPROVAL OF MINUTES

- Reading and acceptance of September 6, 2023 draft meeting minutes

NEW BUSINESS

- Risk Study Presentation
- Vote on the Tobacco Products and Smoking Regulation
- Discussion on Franklin Foot Spa @ 391 East Central Street
- Metacomet shared service grant regional inspector report
- Metacomet shared service grant public health nurse report
- Metacomet shared service grant epidemiologist report

CITIZENS COMMENTARY

ADJOURNMENT

RETAIL FLEXIBLE
NEHA - FDA
RFFM GRANT
PROGRAM
FUNDING MODEL

WHAT ARE THE FDA RETAIL PROGRAM STANDARDS?

- The Voluntary National Retail Food Regulatory Program Standards (Retail Program Standards) *define what constitutes a* ***highly effective and responsive program*** **for the regulation of foodservice and retail food establishments**.

- They begin by providing a foundation and system upon which all regulatory programs can build through a continuous improvement process.
- They encourage regulatory agencies to improve and build upon existing programs. Further, they provide a framework designed to accommodate both traditional and emerging approaches to food safety.
- The Retail Program Standards are intended to reinforce proper sanitation (good retail practices) and operational and environmental prerequisite programs while encouraging regulatory agencies and industry to focus on the factors that cause and contribute to foodborne illness, with the ultimate goal of reducing the occurrence of those factors.

Retail Program Standards are Comprised of Nine Sections

- Standard 1: Regulatory Foundation
- Standard 2: Trained Regulatory Staff
- Standard 3: Inspection Program Based on HACCP Principles
- Standard 4: Uniform Inspection Program
- Standard 5: Foodborne Illness and Food Defense Preparedness and Response
- Standard 6: Compliance and Enforcement
- Standard 7: Industry and Community Relations
- Standard 8: Program Support and Resources
- Standard 9: Program Assessment

Benefits of Enrollment

- Identify gaps in Food Protection Program
- Provides a path to a stronger Food Protection Program through the Comprehensive Strategic Improvement Plan
- Funding for additional training and resources
- Opportunities for additional funding annually to continue work on meeting the Retail Program Standards
- Compliance with the Standards significantly lowers the risk of foodborne illness outbreaks in your community

Franklin Baseline Risk Factor Study Analysis Results and Summary

The Franklin Baseline Risk Factor Analysis is meant to give the Franklin Health Department information about the state of Franklin's food safety.

The results are meant to provide baseline data to be compared to the national baseline study. It also provides Franklin with baseline data to be compared to subsequent studies to be performed every 5 years.

Finally, it highlights areas that the food inspection program, and as a result, food safety in general must improve upon.

What are the risk factors?

Surveillance data from the CDC have consistently identified five major risk factors related to food safety practices within the retail food industry that contribute to foodborne illness. Most regulatory retail food inspection programs throughout the United States monitor these risk factors in their routine inspections, and each necessitates specific food safety behaviors and practices.

These risk factors include:

- Poor personal hygiene
- Improper food holding/time and temperature
- Contaminated equipment/protection from contamination
- Inadequate cooking
- Food obtained from unsafe sources

Industry Segments Evaluated

1. Institutional Food Services- which includes our highest risk individuals

- Nursing Homes/Long Term Care Facilities
- Elementary Schools
- Secondary Schools

2. Restaurants including Full Service and Fast Food

3. Retail food Stores Including Meat, Seafood, Deli

Institutional Food Service

	Nursing Homes/Long Term Care Facilities				Elementary Schools				Secondary Schools		
	%	IN	Total Observations		%	IN	Total Observations		%	IN	Total Observations
Food from Unsafe Sources	100	5	5		100	12	12		100	6	6
Improper Holding/Time & Temperature	80	32	40		98	47	48		92	22	24
Inadequate Cooking	100	5	5		100	12	12		100	6	6
Poor Personal Hygiene	84	21	25		98	59	60		88	21	24
Contaminated Equipment/Protection From Contamination	65	13	20		83	40	48		58	14	24

Restaurants

	Full-Service Restaurant				Fast Food Restaurants		
	%	IN	Total Observations		%	IN	Total Observations
Food from Unsafe Sources	100	23	23		100	51	51
Improper Holding/Time & Temperature	63	58	92		87	177	204
Inadequate Cooking	100	23	23		100	51	51
Poor Personal Hygiene	79	91	115		88	224	255
Contaminated Equipment/Protection From Contamination	45	41	92		73	148	204

Retail food Stores Including Meat, Seafood, Deli

	%	IN	Total Observations
Food from Unsafe Sources	100	5	5
Improper Holding/Time & Temperature	80	16	20
Inadequate Cooking	100	5	5
Poor Personal Hygiene	76	19	25
Contaminated Equipment/Protection From Contamination	95	19	20

Facility Type Average of **IN** Compliance Risk Factors

The chart to the right illustrates the facility type average of **IN compliance** observations.

The chart shows that restaurants (fast food and full-service establishments) had the lowest average of in compliance Risk Factors with an 83% average.

Institutional foodservice establishments (nursing homes & long-term care facilities, elementary schools and secondary schools) followed with 89.73% average **IN compliance** Risk Factors.

Retail food stores following with the highest percentage of **IN compliance** observations with 90.20%.

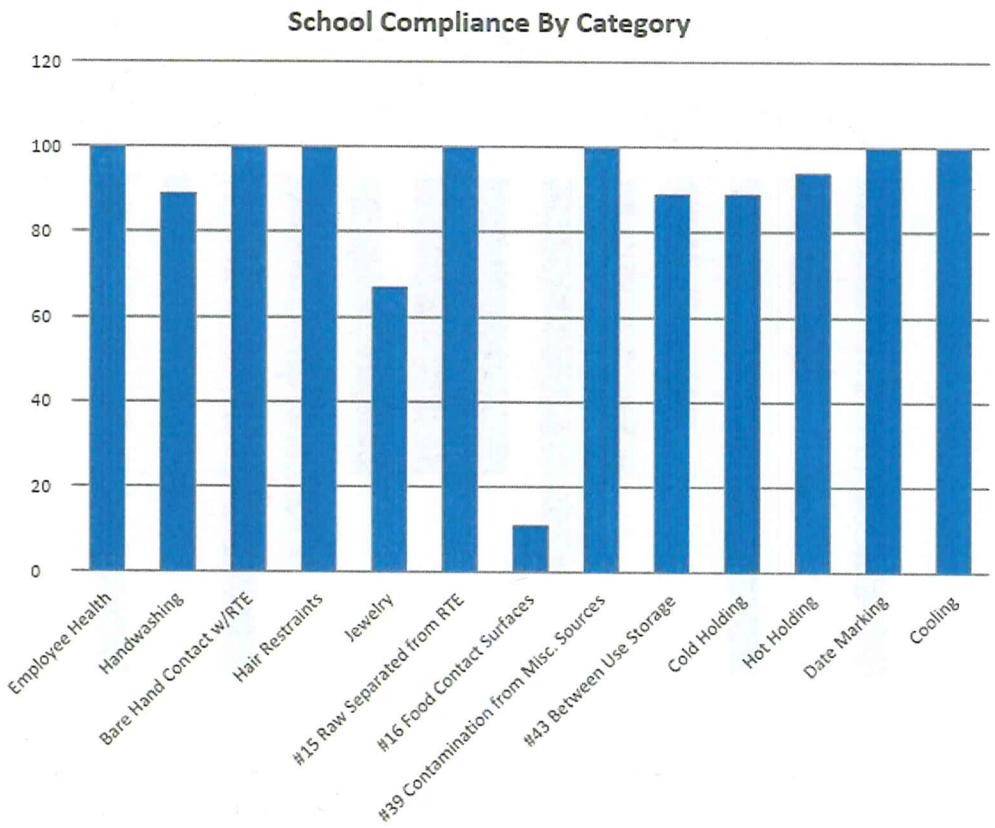
While these numbers, especially the Institutional Foodservice and Retail Food Stores look very high, care must be taken in interpreting this data. There are far fewer observations in these two categories than there are in the restaurants category. That said, all categories were higher than the FDA baseline study completed in 2000[1].

Institutional Food Service	89.73%
Restaurants	83%
Retail Food Stores	90.20%

Average of Percentage of IN Compliance Factors Needing Priority Attention

Employee Health	81.8%
Handwashing	85.8%
Bare Hand Contact w/RTE	99.2%
Hair Restraints	88.2%
Jewelry	66%
#15 Raw Separated from RTE	67%
#16 Food Contact Surfaces	51.2%
#39 Contamination from Misc. Sources	82%
#43 Between Use Storage	81.6%
Cold Holding	63%
Hot Holding	95.4%
Date Marking	63%
Cooling	98.2%
Food From Unsafe Sources	100%

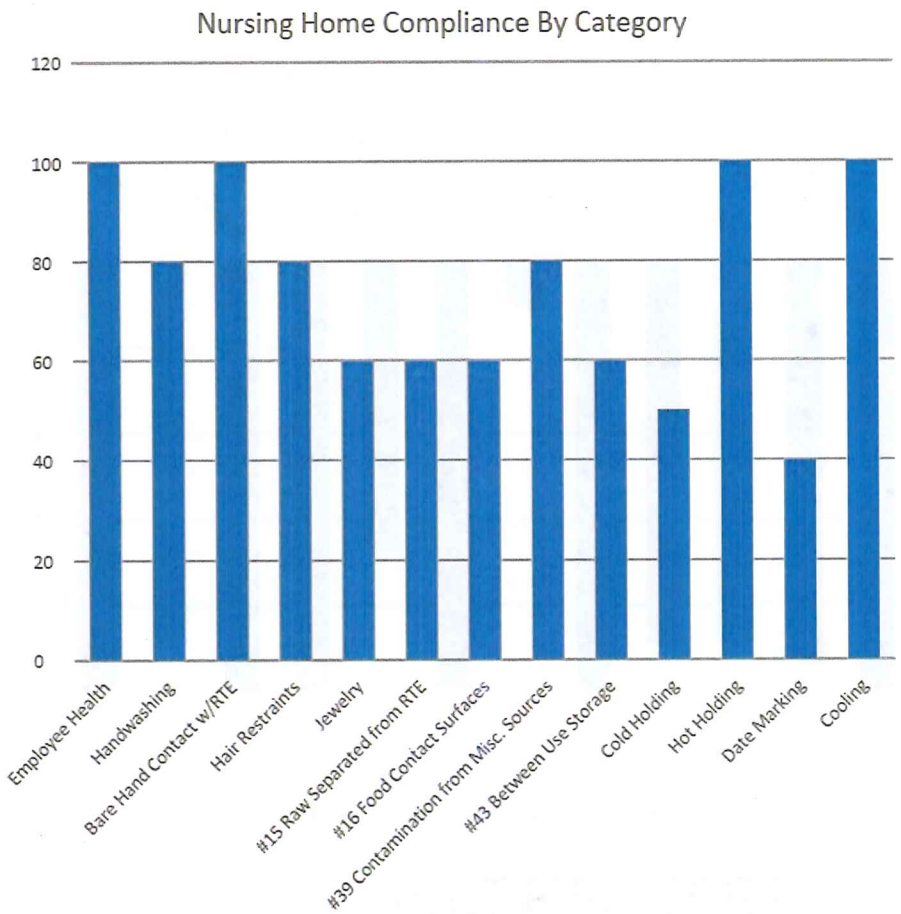
RISK FACTORS REQUIRING PRIORITY ATTENTION



There were 10* Elementary & Secondary Schools observed in the study. The most egregious data points that required priority attention were contamination of food contact surfaces, jewelry, between use storage, and cold holding. Given that elementary schools serve a vulnerable population, all these data items should be improved upon in the next risk factor study.

*Includes restaurant at vocational High School

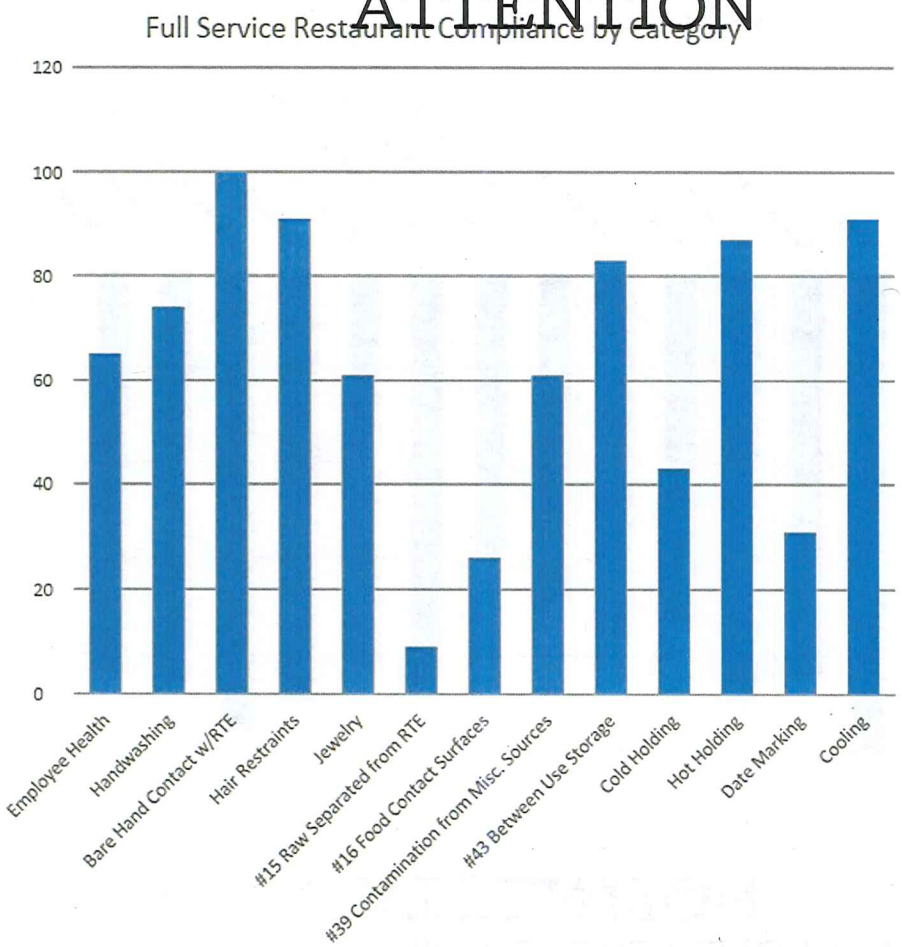
RISK FACTORS REQUIRING PRIORITY ATTENTION



There were 3 Establishments for the in the Nursing Home and Extended Care Category.

The chart to the left displays the Risk Factors requiring priority attention. The Risk Factors in this chart that are the most striking are date marking, cold holding, between use storage, food contact surfaces, raw foods separated from RTE foods, and jewelry. Given the vulnerable population served in this category, improvement in these Risk factors should be made the highest priority.

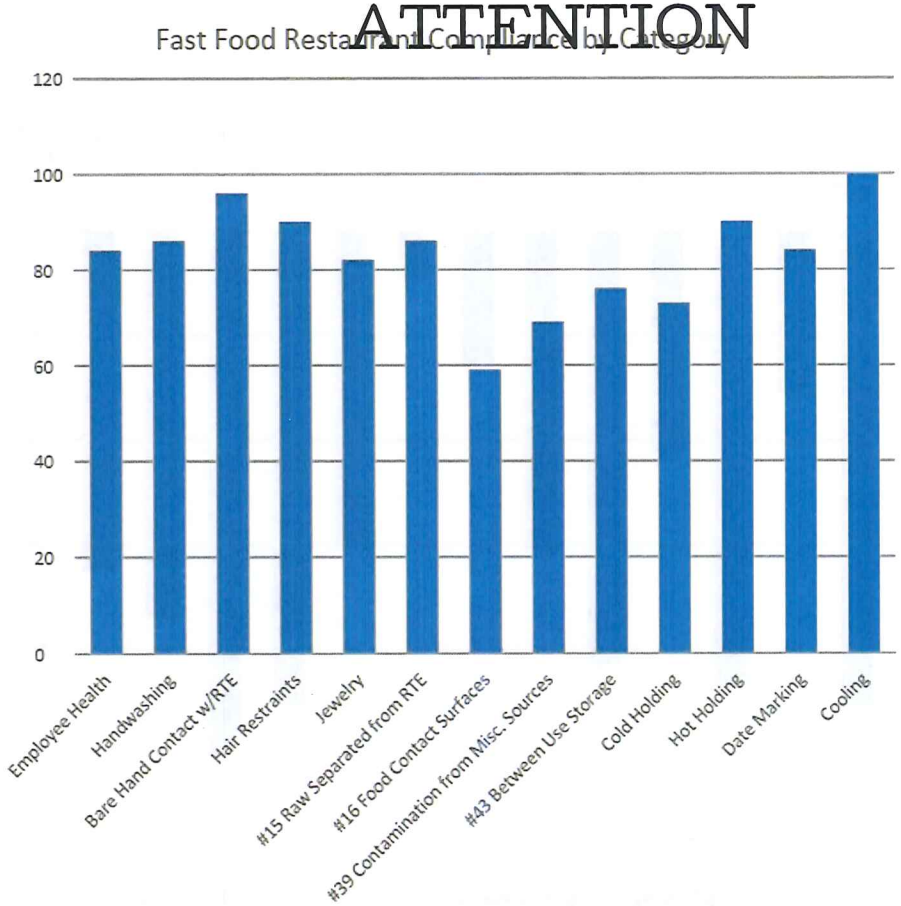
RISK FACTORS REQUIRING PRIORITY ATTENTION



There were 23 Establishments in Full-Service Restaurant Category.

The chart to the left displays the Risk Factors requiring priority attention. The Risk Factors in this chart that are the most striking are #15 raw food separated from RTE foods, #16 food contact surfaces, date marking, and cold holding. Educational efforts on these risk factors should begin immediately to increase the opportunity for success in achieving the 25% improvement goal.

RISK FACTORS REQUIRING PRIORITY ATTENTION



There were 51 Establishments in the Fast-Food Restaurant Category.

The chart to the left displays the Risk Factors requiring priority attention. The Risk Factors in this chart that stand out are #16 food contact surfaces, contamination from Misc. sources, cold holding, and between use storage. Educational efforts on these risk factors should begin immediately to increase the opportunity for success in achieving the 25% improvement goal.

RISK FACTORS REQUIRING PRIORITY ATTENTION

Retail Food Establishments is one of the smaller categories in this study with only 5 establishments.

The chart to the left displays the Risk Factors requiring priority attention. The Risk Factors in this chart in need of immediate attention are employee health agreements, jewelry, cold holding, and date marking. Educational efforts on these risk factors should begin immediately to increase the opportunity for success in achieving the 25% improvement goal.

What's Next

In the next NEHA-FDA RFFM Grant Program cycle, we will be developing and implementing targeted intervention strategies aimed at mitigating the occurrence of out-of-control risk factors within each industry segment.

These intervention strategies will include:

- Supplying additional educational materials to permit holders
- Quarterly segment specific virtual training seminars
- Creating a Biannual Food Safety Newsletter

Regulation of the Franklin 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 heroin[2] 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, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;[8]

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[1] U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.
[2] CDC, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*, (2010), http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.
[3] U.S. Dep't of Health and Hum. Servs., *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* at 122 (2014), http://www.surgeongeneral.gov/library/ reports/ 50-years-of-progress/full-report.pdf.
[4] Id. *at* 13 (Executive Summary).
[5] *United States v. Phillip Morris,* 449 F.Supp.2d 1, 1605-07 (D.D.C. 2006).
[6] Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, *Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health* (HHS Publication No. PEP21-07-01-003, NSDUH Series H-56) (2021) (Retrieved from https://www.samhsa.gov/data/).
[7] CDC, *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5) (2009) (Retrieved from: http:www.cdc.gov/mmwr/pdf/ss/ss5905.pdf).
[8] U.S. Dep't of Health and Human Servs., *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General* 508, 530 (2012) (www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).

Whereas, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction;[9]

Whereas, the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale;[10]

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

Whereas, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste";[12]

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

Whereas, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;[14]

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

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

[10] *See* fn. 3 at p. 85.

[11] MA YRBS 2017

[12] 310 CMR 30.136

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

[14] Ying-Chih Chuang et al., *Effects of neighborhood socioeconomic status and convenience store concentration on individual level smoking*, 59(7) J. Epidemiol Community 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.

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

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

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

Whereas, the Massachusetts Supreme Judicial Court has held that ". . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means."[18]

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

B. **Authority:**

This regulation is promulgated pursuant to the authority granted to the Franklin 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 Franklin Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

Blunt Wrap: Any product made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain loose tobacco or other fillers.

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

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

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

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 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.

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.

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 Franklin; 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:**

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

2. Required Signage:

a. All retail establishments, including adult-only retail tobacco stores shall conspicuously post signage, in the form developed and made available by the Massachusetts Department of Public Health (DPH) and made available from the Franklin 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) 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. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

c. Adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by DPH, on the exterior of the door providing entrance 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 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 **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 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 the purchaser is 21 or older.

E. **Tobacco Product Sales Permit:**

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the Town of Franklin without first obtaining a Tobacco Product Sales Permit issued annually by the Franklin Board of Health. Only owners of establishments with a permanent, indoor, non-mobile location in Franklin are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Franklin.
2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Franklin 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 Franklin 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. Maximum Number of Tobacco Product Sales Permits.
    a. At any given time, there shall be no more than 32 Tobacco Product Sales Permits issued in Franklin, of which only 5 can be adult-only retail tobacco stores. Any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
    b. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-served" basis.
    c. Applicants on the waiting list shall be responsible for ensuring up to date contact information has been provided to the Franklin Board of Health.

8. Sale of Business:

a. Notwithstanding a cap on the total number of permits 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 purchase 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.

F. **Prohibition of Smoking Bars:**

Smoking Bars are prohibited in the Town of Franklin.

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 ninety 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 and eighty cents ($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 Franklin.

4. The Franklin 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.

H. **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)).

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 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 electron nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

J. **Prohibition of the Sale of Blunt Wraps:**

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

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, 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.

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, 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.

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.

Adult-Only Retail Tobacco Stores are exempt from this section.

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 Franklin 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. **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.

R. **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 per 105 CMR 665.040(d), for five (5) 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/may] 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 Franklin 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 Franklin Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. 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.

S. **Separate Violations:**

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

T. **Enforcement:**

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

U. **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.

V. **Effective Date:**

This regulation shall take effect on January 1, 2024.

Bridget Sweet, Chair _____

Timothy Cochrane, Jr., Vice Chair _____

Jeffrey Harris, Member _____

Franklin Board of Health
Monthly Report

Name: John Robertson
Date submitted: October 2, 2023
Report includes work performed between the dates of September 1, 2023 through September 30, 2023.

Inspection category / work performed	Inspections performed
1. HOUSING	
Housing code inspections	0
Housing re-inspections	0
Lead paint inspections	0
Housing Code court cases	0
2. NUISANCE INSPECTIONS	
Nuisance complaint inspections	0
Nuisance re-inspections	0
Nuisance court cases	0
3. FOOD ESTABLISHMENT INSPECTION	
Bi-annual inspections (2/year)	21
Food establishment re-inspections	3
Food complaint inspections	0
Food complaint re-inspections	0
Food borne illness inspections	0
Food pre-opening inspections	0
Temporary Events	0
4. SPECIAL INSPECTIONS	
Rooming houses, hotels, motels	0
Public and semi-public pools and spas	0
Camps	0
Miscellaneous inspections, meetings, etc. … (Voucher, task Force)	0
TOTAL NUMBER OF INSPECTONS	24

5. MEETINGS, CONFERENCES, SEMINARS and TRAINING COURSES:
   Yankee Conference September 20-22

Submitted by: _____
John Robertson
Regional Health Agent

Public Health Agenda - September

Epidemiologist

Franklin/Norfolk/Wrentham Dashboard

- In the month of September there were 68 confirmed COVID-19 positive cases. There were 0 reported COVID-19 related deaths in the month of September. Confirmed cases have increased 4% from August to September.

Regroup Text

- Weekly wellness updates went out through regroup texts and emails to raise awareness of health issues

Surveillance & Case Management of Communicable Diseases

- Calling and investigating communicable disease cases, answering questions, giving guidance, doing case investigations, and reporting data into MAVEN.

Central Park Terrance

- Bingo at Central Park Terrace on 09.13

Flu Clinics

Wrentham Developmental Center - 9/7
Wrentham COA - 9/12
Delaney/Rodrick School - 9/14
Liberty Pines - 9/19
Bennett Gardens- 9/21
Wrentham Courthouse - 9/21
Franklin Senior Center - 9/28

Restaurant Expo

- September 27th, 2023 at Franklin Public Library. We had 17 vendors - tons of food samples, raffles, giveaways, and prizes.

Franklin Opioid Data Dashboard

- Working with Natalie (GIS Specialist) in creating an opioid dashboard including Franklin's opioid overdoses, deaths, narcan administration, overdose follow ups, and more.

Health Fair

- Fall Health Fair will be hosted at the Franklin Public Library on November 8th from 3 PM - 6PM. I have started reaching out to vendors - we have 10 so far and looking to get about 20. There will be a petting zoo.

Opioid Advisory Group

- Created a survey for organizations to fill out to request opioid funding. Met with Opioid Advisory group on 09/21 to

Meetings/Certifications

- 2 Biweekly MDPH Webinars & Weekly Regional Epidemiology Zoom Meeting

Public Health Nurse Agenda

❖ **Communicable Diseases:**

-COVID-19 cases (data from 10/2/23, data is subject to change):

-Franklin total COVID-19 cases for September, 2023: 68 (versus 70 in August, 2023)

-Continue to monitor COVID-19 clusters other communicable disease case investigations (food-borne illnesses, LTBI)

-EEE: No human cases reported in MA; EEE risk level low for Franklin

-WNV: 3 human cases reported in MA (Hampden, Middlesex and Worcester County); WNV risk level low for Franklin

❖ **Central Park Terrace**

-BINGO on 9/13/23

-Mobile food pantry (free produce and shelf-stable foods) occurring monthly

❖ **Flu Clinics**

-Vaccinator at Wrentham developmental center on 9/7/23

-Vaccinator at Delany School in Wrentham 9/14/23

-Held clinic at the Franklin Senior Center on 9/28/23 (117 vaccines delivered)

-Kids flu clinic on 10/11/23 at the Franklin Senior Center

❖ **CPR Class**

-Hands-only CPR class at the Franklin Food Pantry on 9/14/23 for staff

❖ **Meetings/Trainings**

-Bi-weekly Local Board of Health Webinars

❖ **Nursing Care**

-Wound care

-Blood pressure and glucose monitoring

-Case management services/referrals

❖ **Migrant Assistance**

-Assisting with medical appointments and medication management

-Blood pressure and glucose testing

-Providing resources/case management services

SIGN IN SHEET

BOH MEETING 10/4/23

PRINT	SIGNATURE
Kimberly Mu-Chow	Kimberly Mu-Chow
Diane Lepre	[illegible]
Alex Earls	[illegible]