BOARD OF HEALTH
September 18, 2018

The Board of Health held a meeting in Room 9 at the Town Hall, 121 Glen Road, Wilmington, MA. The meeting was called to order at 5:40 p.m. Present were, Elizabeth Sabounjian, Dr. Daniel King DMD, Dr. Jane Williams and Shelly Newhouse, Director of Public Health. The next regularly scheduled Board of Health meeting will be October 2, 2018 at 5:30 p.m. in Room 9 at the Town Hall, 121 Glen Road, Wilmington, MA.

The Board reviewed and approved the August 7, 2018 minutes.

The Board reviewed the most recent food inspection reports.

New Business

Continued Public Hearing for proposed changes to Section 8 smoking regulations.

The Chairman, Elizabeth Sabounjian opened the public hearing at 5:45 p.m. No one was present for comments and no written comments were provided. The Board reviewed all correspondence and received thumb drives with additional information. With no further discussion Dr. Williams made a motion to close the public hearing, Dr. King seconded, voted 3-0. Dr. Jane motioned to approve the changes to Section 8 smoking regulations. Section 8.24 Sale of Flavored Tobacco Products prohibited will have an effective date of October 15, 2018, Section 8.25 Limiting the Number of Tobacco Sales permits will have an immediate effective date of September 18, 2018. Dr. King seconded, voted 3-0. The amended regulations will be published as a legal notice in the next newspaper edition of the Town Crier.

Section 8 Smoking and Tobacco Products

8.0 Definitions: Smoking shall mean the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco product designed to be combusted and inhaled, or relies on vaporization or aerosolization, including marijuana. (as defined herein).

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

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

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

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

E-cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured or marketed and sold as e-cigarettes, e-cigars, e-pipes or under any other product name.

Marijuana or "Marihuana" includes all parts of the any plant of the genus Cannabis.

Health Care Institution: Any entity, person, or group of persons that provides health care services and employs health care providers subject to licensing under G.L. c. 112, §§ 1, et seq., or a retail establishment or business that provides pharmaceutical goods and services and is subject to 247 CMR 6.00. Such persons and entities shall include, but not be limited to, hospitals, clinics, urgent care facilities, health centers, drug stores, pharmacies, physician's offices, optician's or optometrist's offices, and dental offices.

Nicotine Delivery Product: Any article, item or product made wholly or in part of a tobacco substitute or containing nicotine. This definition shall not apply to any product which is approved or certified by a regulatory agency as a tobacco use cessation or other medical purpose product and which is marketed and sold exclusively for such purpose.

Retail Tobacco Store: As defined in G.L. c. 270, §22. and an establishment whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age of 21 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Wilmington Board of Health.

Flavored Tobacco and Nicotine 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.

Flavored Nicotine Delivery Product: Any nicotine delivery product, as defined herein, including e-cigarettes, as defined herein 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 nicotine delivery product, including e-cigarettes as defined herein, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product, that the product has or produces a characterizing flavor shall constitute presumptive evidence that the product is a flavored nicotine delivery product, including e-cigarettes, as defined herein.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption or a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice, provided 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.

Tobacco Product: Any product which contains tobacco or nicotine in any form, including but not limited to cigarettes, e-cigarettes, cigars, pipe tobacco, chewing tobacco, and snuff.

Self Service Display: A Self-Service Display is any display from which customers may select or make a tobacco product without access from an employee or store personnel.

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.

Schools: Public or private elementary or secondary schools.

verification is required for any person who reasonably appears to be 30 years of age or older. (*effective November 1, 2015)*

8.8 Existing vending machines dispensing tobacco products shall be located in plain view and control of a responsible employee, and all such vending machines must be equipped with a lock-out device approved by the Board of Health. Sale of a tobacco product to a minor by means of a vending machine is punishable by a fine of $300.00. A second offense within a two year period shall be punishable by removal of the tobacco vending machine(s) for a period of one (1) year. A third offense within the same two-year period shall be punishable by permanent removal of the tobacco vending machine. After the effective date of this regulation, any new installation of a vending machine dispensing tobacco products shall be prohibited.

8.9 In conformance with Massachusetts General Laws, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 shall be posted conspicuously in any place which sells tobacco products by the operator thereof.

8.10 A separate notice shall be posted at all of the cash registers and on any vending machine such that it may be readily seen by a person standing at or approaching the cash register or vending machine. Such notice shall directly face the patrons and shall not be obstructed from view, and shall be in two contrasting colors, at least 48 square inches in area, and able to be read at a distance of five (5) feet. Such notice shall state that the sale of any tobacco product to persons under age 21 is illegal. The owner or other person in charge of a shop or other place used to sell nicotine delivery products shall also conspicuously post a sign stating that "The sale of nicotine delivery products to persons under 21 years of age is prohibited." All vending machines containing tobacco products, as defined herein, are prohibited.

8.11 Self-service displays of tobacco products are prohibited. Displays of tobacco products, including humidors, must be under the direct supervision of an employee and may be located only in an area behind or above the sales counter or courtesy desk counter area. Walk-in humidors must be located immediately adjacent to the cash register so as to prevent access without age verification. A Commercial Roll-Your-Own (RYO) machine is a mechanical device, by whatever manufacturer made and by whatever name known, that is designed to roll and wrap tobacco into products.

The following shall apply to Commercial Roll-Your-Own ("RYO") machines:

8.11.1 A Commercial RYO machine must be operated from within a locked area or have a lockout device on the machine to be unlocked by a store employee. Commercial RYO machines can only be operated by a customer after they have been granted access (unlocking) by an employee or store personnel, otherwise they would be considered self-service and prohibited. Customers must be 21 years of age or older to use the machine. Customer access to the RYO area can only be made by providing a store employee with proper identification showing that the consumer is 21 years of age or older. A store employee shall provide access to the locked RYO area or to the lockout device and provide instruction to the customer. The RYO area must be cleaned by store personnel only after every use and prior to use for the next customer. Cigarette product contact surfaces shall be cleaned with a disinfectant cleaner. Disposable clean collection boxes or bags must be used to collect product.

The fine for the violation of any of the above shall be $100.00 for each violation, each day constituting a separate violation.

8.12 No person shall distribute tobacco products or other products containing tobacco free of charge.

8.13 No person shall sell, offer for sale, or display tobacco or nicotine delivery products within the Town of Wilmington, including sales by vending machine, without a valid tobacco sales permit issued by the Board of Health. This shall not apply to wholesale sales to retail establishments. (1/1/97) Penalties: Unless

otherwise specified, the penalty for violation under this Section 8.13 shall be $250.00 per violation, each violation shall be considered a separate offense and the penalty shall apply to each day of the violation.

8.13.1 No health care institution located in Wilmington shall sell or cause to be sold tobacco products or nicotine delivery products. *(effective November 1, 2015)*

8.14 The fee for a tobacco sales permit shall be $ 200.00. (1/23/06)

8.15 A tobacco sales permit shall not be transferable. (1/1/97)

8.16 Any tobacco sales permit shall expire at the end of the calendar year in which it was issued. (1/1/97)

8.17 Each retail location shall be required to obtain a separate tobacco sales permit. (1/1/97)

8.18 The tobacco sales permit shall be posted in a conspicuous place at the point of sale. (1/1/97)

8.19 A tobacco sales permit shall not be issued to persons under the age of Twenty-one. (11/1/2015)

8.20 The fine for the sale of tobacco products without a tobacco sales permit shall be $250.00. (8/7/2018)

8.21 The Board of Health may revoke any tobacco sales permit for violation of these regulations. (1/1/97)

8.22 The penalties for violation of these tobacco regulations by a holder of a tobacco sales permit shall be according to the following table: (1/1/97)

First Violation:	
Sale of tobacco to a person under 21 years of age	$300.00
Other violation	50.00
Second Violation (within 12 months of the first violation):	
Sale of tobacco to a person under 21 years	$300.00
Other violation	50.00
Suspension of the tobacco sales permit for a period not to exceed 7 days	
Third and Subsequent Violation (within 12 months of any prior violation):	
Sale of tobacco to a person under 21 years	$300.00
Other violation	50.00

Suspension of a tobacco sales permit for a period of not less than 7 days and not to exceed one year.

8.23 Smoking and the use of any tobacco product(s) and marijuana is hereby prohibited in Wilmington at town-owned playgrounds, parks, beaches, beach areas, recreational areas and facilities. The penalties for violation shall be $50.00 for each violation. The Police Department, Board of Health Agent or it's designee shall enforce the regulation.

8.24 Sale of Flavored Tobacco Products Prohibited: No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, flavored nicotine delivery product or otherwise, except in retail tobacco stores. *October 15, 2018*

8.25 Limiting the Number of Tobacco Product Sales Permits Issued in the Town of Wilmington. As of *September 18, 2018* the Wilmington Board of Health shall not issue a Tobacco Product Sales Permit to a

first-time permit applicant with a new business. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his/her permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within 60 days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and failure to meet this deadline will result in the Buyer being treated as a first-time permit applicant.

Continued Public Hearing for proposed addition of Section 22 Rdna regulations.

The Chairman, Elizabeth Sabounjian opened the continued public hearing at 6:00 p.m. Dr. Williams motioned to close the public hearing, Dr. King seconded, voted 3-0. No one was present and no written comments were provided. Dr. King motioned to approve the addition of Section 22 Rdna regulations with an immediate effective date of September 18, 2018 and an effective date of permitting of January 1, 2019, Dr. Williams, seconded, voted 3-0.

REGULATIONS FOR USE OF RECOMBINANT DNA MOLECULE TECHNOLOGY
SECTION 22

The Board of Health, Town of Wilmington, Massachusetts, acting under the authority of Section 31, Chapter 111 of the General Laws and amendments and additions thereto, and by any other power thereto enabling, adopt the following rules and regulations in the interest of and for the preservation of the public health.

1. APPLICABILITY

All research and development activities associated with constructing and handling the following materials within the Town of Wilmington shall be performed in strict accordance with regulations set forth in this Section including requirements in the Center for Disease Control (CDC) *Biosafety in Microbiological and Biomedical Laboratories* (*BMBL*) and National Institutes of Health (NIH) Guidelines. These regulations shall govern in addition to the CDC and NIH:

a) Recombinant DNA (rDNA) molecules
b) Organisms and viruses containing rDNA molecules
c) Biological agents which:
    1. are classified as a Risk Group 3 through 4 Agent by the National Institutes of Health ("NIH") Guidelines
    2. require Biosafety Level-3 through Biosafety Level-4 containment as determined by an Institutional Biosafety Committee or Institution's Biosafety representative
    3. are identified by the United States Department of Health and Human Services ("DHHS") or the United States Department of Agriculture ("USDA") as a "Select Agent" and require registration for use under the Federal Select Agent Program.

These regulations do not apply to work requiring Biosafety Level-1, Biosafety Level-2 and finished products which contain rDNA molecules and have been approved by other government regulatory agencies for medical or other purposes.

2. DEFINITIONS

For the purpose of these regulations, the following definitions are adopted:

a) NIH Guidelines: "Guidelines for Research involving Recombinant DNA Molecules"

promulgated by the National Institute of Health (NIH) of the United States Department of Health and Human Services. The most current available version of the guidelines will be used.

In the event that the National Institutes of Health shall discontinue or abolish their guidelines, those guidelines in effect at the time of such discontinuance shall remain in effect as to all activities within the Town of Wilmington.

b) Institution means: Any public or private entity including Federal, State, and local governmental agencies.

c) Institutional Biosafety Committee (IBC) means: A committee that (I) meets the requirements for membership specified in the NIH Guidelines (Section IV- B-2) and (ii) reviews, approves, and oversees projects in accordance with the responsibilities defined in the Guidelines (Section IV-B-2 and IV-B-3).

d) Institutional Biosafety representative means: A company employee or outside consultant who is responsible for establishing and monitoring workplace safety procedures designed to minimize or prevent injury or loss due to hazards involving materials outlined in these regulations.

e) Large-scale means: The use of more than ten liters but less than 5000 liters of rDNA culture.

f) Recombinant DNA Molecules mean (as defined by NIH Guidelines):

(1) molecules that a) are constructed by joining nucleic acid molecules and b) that can replicate in a living cell, i.e., recombinant nucleic acids
(2) nucleic acid molecules that are chemically or by other means synthesized or amplified, including those that are chemically or otherwise modified but can base pair with naturally occurring nucleic acid molecules, i.e., synthetic nucleic acids
(3) molecules that result from the replication of those described in (1) or (2) above

g) Biological Agents: means any microorganism (including, but not limited to, bacteria, viruses, fungi, rickettsia or protozoa) or infectious substance, or any naturally occurring, bioengineered or synthesized component of any such microorganism or infectious substance

h) Biosafety in Microbiological and Biomedical Laboratories (BMBL) Guidelines. *MGL Ch.44 Sec.53G.* US Department of Health and Human Services, CDC and NIH. The most current edition and any subsequent amendments by NIH or the CDC.

i) Four biosafety levels have been defined by CDC in the BMBL which specifies administrative procedures, safety equipment, and facilities for work with biological agent or toxins. Research with biological agents and toxins is assigned to a biosafety level based on the pathogenicity and transmission route of the particular agent or toxin used.
1. Biosafety Level 1 (BSL-1) is suitable for work involving well-characterized agents not known to consistently cause disease in immunocompetent adult humans, and present minimal potential hazard to laboratory personnel and the environment.

2. Biosafety Level 2 (BSL-2) builds upon BSL-1. BSL-2 is suitable for work involving agents that pose moderate hazards to personnel and the environment.

3. Biosafety Level 3 (BSL-3) is applicable to clinical, diagnostic, teaching, research, or production facilities where work is performed with indigenous or exotic agents that may cause serious or potentially lethal disease through inhalation route exposure.

4. Biosafety Level 4 (BSL-4) is required for work with dangerous and exotic agents that pose a high individual risk of life-threatening disease, aerosol transmission, or related agent with unknown risk of transmission.

j) Significant deviation means: Any deviation that might have an adverse effect on personal or public health.

k) NIH Risk Group Agents are classified into four Risk Groups (RGs) according to their relative pathogenicity for healthy adult humans by the following criteria:

(1) Risk Group 1 (RG1) agents are not associated with disease in healthy adult humans.
(2) Risk Group 2 (RG2) agents are associated with human disease which is rarely serious and for which preventive or therapeutic interventions are often available.
(3) Risk Group 3 (RG3) agents are associated with serious or lethal human disease for which preventive or therapeutic interventions may be available.
(4) Risk Group 4 (RG4) agents are likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available.

l) Select Agents and Toxins means: biological agents classified under 7 CFR 331, 9 CFR 1221 or 42 CFR 73.

3. INSTITUTIONAL BIOSAFETY COMMITTEE (IBC)

a) The Institutional Biosafety Committee (IBC), established per the NIH Guidelines, if required, shall include as members the Director of Public Health of the Town of Wilmington or his/her designee, plus one additional community representative.

b) The IBC shall meet no less than once a year. All minutes of the IBC meetings shall be forwarded to the Board of Health.

c) The community member of the IBC and the Director of Public Health, or his/her designee, shall have no financial interest in any institution involved in the use of rDNA, or any other institution in competition therewith, and such representatives shall be bound to the same provisions as to non-disclosure and non- use of proprietary information and trade secrets as all other members of IBC, except to the extent necessary to alleviate any public health hazard. As used in these regulations proprietary information and trade secrets shall be defined as set forth under the law of the Commonwealth of Massachusetts.

d) In accordance with the NIH Guidelines, the IBC, acting on behalf of an institution, reviews all rDNA use, falling under the purview of the NIH, for compliance with the NIH Guidelines and approves those projects that conform with the NIH Guidelines

e) All information sent to the Board of Health shall have any proprietary information and trade secrets removed therefrom. The full text shall remain on file in the records of the institution for inspection at all reasonable times by any member of the IBC.

4. PERMITS

a) All institutions planning to use rDNA referenced in applicability (1) must obtain a permit from the Board of Health before commencing said technology. All permits are issued for one year on January 1st and may be revoked for cause.

b) Institutions seeking a first time permit from the Board of Health shall submit or make available the following:

(1) A plot plan showing the proposed location of the facility and a floor plan shown in the internal layout of the facility.

(2) A listing of all organisms, containment levels, and decontamination procedures to be employed.

(3) A documented review process to insure the safe handling and containment of research and development activities using rDNA materials. This review must include a review and approval by an IBC or Institution's designated Biosafety representative.

(4) A plan for systematic monitoring of waste to assure that surviving RDNA organisms will not be released into the environment.

(5) A plan for systematic pest control management in laboratories, contiguous facilities and food service establishments in any and all segregated buildings.

(6) A plan for systematic security of the premises.

(7) The institution's occupational health program, biosafety manual and Standard Operating Procedures pertinent to the work being performed as determined by the IBC or biosafety representative for the institution

(8) The name(s) and credentials of the institution's biosafety representative who shall be responsible for enforcing the guidelines and obtaining proper permits.

(9) A plan for orienting representatives of the Wilmington Health, Fire and Police Departments to the physical plant and to procedures to be utilized in the event of an emergency.

c) For first time applicants the Board of Health shall review the institution's application for a permit and supporting documents within 30 days.

d) The fee for a 1st time permit granted by the Board of Health, shall be $500.00

e) Annual permit renewal will be on or before January 1st and will involve an abbreviated permit renewal if the type of work and material used has not changed since the previous permit issuance. The fee for the annual renewal will be $100.00

5. INSPECTION AND REVIEW

a) All institutions shall allow inspection of their facilities, procedures and practices in order to confirm compliance with these regulations upon notification of inspection.

b) The Board of Health, its employees, and any individual or institution employed to perform inspections shall maintain the confidentiality of all proprietary information release to them by reason of these regulations.

6. RESTRICTIONS

a) Work with rDNA and biological agents or toxins requiring BSL-3 and BSL-4 are not permitted in the Town of Wilmington.

b) Large scale rDNA use shall not be permitted.

c) Work with Select Agents requiring registration with the CDC Select Agent Program is not permitted in the Town of Wilmington.

d) Precautions shall be adhered to, to preclude release into the environment that is to sewers, drains or the air, of any live organisms containing rDNA or active antibiotics.

e) The institution shall report within 24 hours to the Director of Health, followed by a written report within 15 days to the Board of Health, any significant accidents or illnesses or releases related to the use of rDNA. An additional inspection of facilities and procedures may be deemed necessary by the Board of Health based upon its judgment of the nature and extent of the problem.

7. PENALTIES

a) Violation of these regulations shall subject the violator to a fine of Five Hundred Dollars ($500.00) per day, and in addition, the facility in which the violation occurs may be closed by the Board of Health. Each day of violation shall constitute a separate and distinct offense.

b) If in the opinion of the Board of Health, work being performed under the guidelines of these regulations causes a nuisance or adversely affects the public health, safety and welfare in Wilmington, the permit may be revoked. Once a permit has been issued it may be revoked by the Board of Health upon determination, after due notice and hearing that the institution involved has materially failed to comply with these regulations, the permit agreements or the guidelines.

8. VARIANCE

Variances from these specific requirements of these Regulations may be authorized by the Board of Health after notice and public hearing if the Board reasonably determines that the variance requested will not be detrimental or injurious to the public health.

Effective Date September 18, 2018

Dr. Williams offered to be a BioSafety committee representative with Dr. King as a backup. These new regulations will be presented to the Board of Selectman for approval of the $500 permit fee. The regulations will be published as a legal notice in an upcoming edition Town Crier newspaper.

Variance Request 375 Ballardvale Street

FedEx properties at 375 Ballardvale is constructing a guard shack. As stated in the Plumbing Code a bathroom is required and any variance to that regulation must first be approved by the local Board of Health. A plan was provided detailing the variance request to omit the bathrooms in the guard shack. Dr. Williams motioned to approve the request for variance, Dr. King seconded, voted 3-0.

Variance Request 301 Ballardvale Street

Locust Robotics, a manufacturing facility is constructing additional warehouse and packaging space inside their existing facility. As stated in the Plumbing code, showers are required in any new warehouse space and any variance to that regulation must first be approved by the local Board of Health. Plans were provided detailing the request and photographs of the interior space were also provided. Dr. Williams motioned to approve the request, Dr. King seconded, voted 3-0.

Department Business

West Nile Virus

The Director reported that we have had 2 positive mosquito pools, one in the Suncrest Avenue wetland area and the other in the Kelley Road wetland area. Central Massachusetts Mosquito Control Program has completed their routine spraying for the summer, however, they will continue to spray in these areas or additional areas of concern with West Nile Virus. Ms. Sabounjian asked about larvacide treatment and spraying on private property. The Director stated that any resident can put a request in to CMMCP for this at any time throughout the season.

Flu Clinics

There will be one school based flu clinic with flu mist. There will be a Town wide flu clinic offering both flu mist and injectable. No high dose flu clinics will be offered. Home bound flu shots will be given on an appointment basis.

No other updates were provided. Dr. King motioned to adjourn at 6:30 p.m., Dr. Williams seconded, voted 3-0.

Shelly Newhouse

Recording:
Shelly Newhouse, Director of Public Health