

Regulation of the Westfield Board of Health Restricting the Sale of Tobacco Products

This Regulation will replace any and all existing Tobacco regulations previously approved by the Westfield Board of Health.

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, the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;⁸

¹ U.S. Center for Disease Control and Prevention (CDC), Health Effects of Cigarette Smoking Fact Sheet (2021), [Health Effects of Cigarette Smoking | CDC](#)

² CDC, How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease, (2010), [2010 Surgeon General's Report | Smoking & Tobacco Use | CDC](#)

³ 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), [Reports and Publications | HHS.gov](#)

⁴ *Id.* at 13 (Executive Summary).

⁵ *United States v. Phillip Morris*, 449 F.Supp.2d 1, (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) <http://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, 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 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

⁹ Food and Drug Administration, Fact Sheet: Flavored Tobacco Products (2011), [Tobacco Products | FDA](#); 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) <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>

¹⁰ See fn. 3 at p. 85.

¹¹ MA Youth Risk Behavior Survey (YRBS) 2017

¹² 310 CMR 30.136

¹³ New England Commission on Higher Education, Standards for Accreditation at 24 (2021), [Standards for Accreditation - New England Commission Higher Education \(neche.org\)](#).

¹⁴ Ying-Chih Chuang et al., Effects of neighborhood socioeconomic status and convenience store concentration on individual level smoking, 59(7) *J. Epidemiol Cmty Health* 568 (2005) (doi: 10.1136/jech.2004.029041); Shelley D. Golden et al., County-level associations between tobacco retailer density and smoking prevalence in the USA, 2012, 17 (101005) *Prev. Med. Rep.* (Mar. 2020) (doi: 10.1016/j.pmedr.2019.101005); Eric C. Leas et al., Place-Based Inequity in Smoking Prevalence in the Largest Cities in the United States, 179(3) *JAMA Intern Med.*, 442 (2019) (doi: 10.1001/jamainternmed.2018.5990); JG Lee et al., Associations of tobacco retailer density and proximity with adult tobacco use behaviors and health outcomes: a meta-analysis. *Tobacco Control*. Published Online First: 03 September 2021; LR Reitzel et al., The effect of tobacco outlet density and proximity on smoking cessation. *American Journal of Public Health*. 2011, 101(2):315-320; L Henriksen et al., Is adolescent smoking related to the density and proximity of tobacco retailers and retail cigarette advertising near schools? *Preventive Medicine*. 2008, 47(2): 210-4.

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 Westfield Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Westfield 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

s.22): An establishment 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 primary 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 Westfield 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.

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.yjmed.2015.01.025).

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

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 tobacco products.

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. A retail establishment that provides optician, optometric, hearing aid or audiology services but is not subject to regulation by the board of registration in pharmacy shall not be considered a health care institution.

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 product.

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 solely for 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.

Retail Establishment: A physical place of business or a section of a physical place of business wherein 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.

Shall: Shall implies an obligation and is intended to be equivalent to must.

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 or hemp wrap with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

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.

For the following definitions refer to the Massachusetts Regulations (CMR) 105 CMR

665.005: [download \(mass.gov\)](http://www.mass.gov)

- Characterizing Flavor
- Child-Resistant Package
- Coupon
- Distinguishable
- Liquid Nicotine container
- Listed or Non-Discounted Price
- Person
- Tobacco Product

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 smoking bars and adult-only retail tobacco stores, shall conspicuously post signage inside the establishment, in the form developed and made available by the Massachusetts Department of Public Health. Such signage shall include: (i) a copy of M.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. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store 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. All smoking bars and those adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store 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 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 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.

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

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute or offer for sale tobacco products, as defined herein, within the City of Westfield without first obtaining a Tobacco Product Sales Permit issued annually by the Westfield Board of Health. Only owners of

establishments with a permanent, indoor, non-mobile location in Westfield are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Westfield.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Westfield 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 individual retail establishment selling tobacco products, as defined herein. The fee shall be determined by the Westfield 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. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
6. As of the effective date of this regulation, no new adult-only retail tobacco stores shall be located within twenty-five (25) feet of an existing retailer with a tobacco product sales permit.
7. 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.
8. 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.
9. 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.

10. Any permit not renewed either because a retailer no longer sells tobacco products as defined herein, or because a retailer closes the retail business, shall be returned to the Westfield Board of Health.

11. Maximum Number of Tobacco Product Sales Permits.

a. At any given time, there shall be no more than fifty-five (55) Tobacco Product Sales Permits issued to tobacco retail outlets located within the City of Westfield.

b. An application to add a new Tobacco Product Sales Permit may be made at any time to the City of Westfield Department of Public Health. Approval to add such a permit shall be considered by the Board only after a public hearing has occurred on the application, and a vote has been taken by the Board resulting in an increase in the maximum number of permits as stated in subsection E. 9. a. If, after reviewing the application, the Board of Health votes against amending the maximum number of permits, the applicant shall not submit another application until at least two years after the date of that vote, unless the Board of Health votes in favor of an earlier reconsideration.

c. If a permit is not renewed under the provisions of subsection E.6. (failure to pay outstanding fines), or subsection E.7. (sale of a tobacco product to a person under twenty-one (21) years of age as defined in subsection D.1.), or if a permit is returned under provisions of subsection E.8 (retailer no longer selling tobacco products or closes the business), the Board shall hold a public hearing to consider whether the maximum number of Tobacco Product Sales Permits should be reduced and shall then vote whether to amend the maximum number of permits. If the Board does not vote to reduce the maximum number of permits, applications for a new permit shall be considered using procedures set forth in subsection E.9.b.

12. 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 bonafide 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.

13. Retail Density.

- a. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
- b. Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the current permit holder if the applicant intends to sell tobacco products, as defined herein.
- c. If the purchaser of a business with a valid tobacco sales permit pursuant to Section E. changes the location of the business, the new location shall be subject to the retail density requirements of Section E.10.

F. Prohibition of Smoking Bars:

Smoking Bars are prohibited in the City of Westfield.

G. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and fifty cents (\$2.50) 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 Westfield.
4. The Westfield 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)).

For the purpose of this regulation, Flavored Tobacco Product Enhancer includes but is not limited to flavored rolling papers, flavored hemp wraps, and flavored tinctures or infusions for flavoring rolling papers, hemp wraps, etc.

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 electronic 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 Westfield.

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 kufi-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.

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

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

No educational institution located in Westfield 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. In addition, no person shall use a tobacco product as defined herein within school buildings or facilities or on the grounds or school buses of a public or private vocational school or at a school sponsored event. Each School committee or board of

trustees shall establish a policy regarding violations of this section. The policy may include, but is not limited to, mandatory education classes on the hazards of using tobacco products.

R. 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.

S. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent, and not their employees, to ensure compliance with all sections of this regulation. For violations of the sections of this regulation that incorporate G.L. c. 270, §§6, 28, 29 and 105 CMR 665.000, the following penalties apply:
 - a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) for a State Law violation and one hundred dollars (\$100.00) for a Local Policy violation 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 seven (7) 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) for a State Law violation and two hundred dollars (\$200.00) for a Local Policy violation shall be issued and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.
 - c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) for a State Law violation and three hundred dollars (\$300.00) for a Local Policy violation shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
 - d. In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Product Sales Permit.

2. Failure to cooperate or interference with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while 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.
4. The Westfield 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 a hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Westfield Board of Health shall impose fines and/or 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.
5. 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.

T. Separate Violations:

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

U. Enforcement:

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

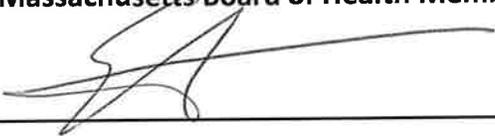
V. Severability:

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

W. Effective Date:

This regulation shall take effect on **March 11, 2026**

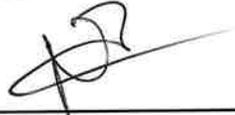
Westfield, Massachusetts Board of Health Members:



Stanley D Strzempko M.D., Chairperson 3/11/2026
Date



Carrie Hildreth-Fiordalice 3/11/2026
Date



Nitin Bhatnagar M.D. 3/11/26
Date

***This Regulation was approved and passed unanimously by the above listed Board Members at the March 11, 2026 Board of Health Meeting. This vote can be referenced in the meeting minutes taken.**