

CITY OF WESTFIELD BOARD OF HEALTH

TOBACCO CONTROL REGULATIONS

Revised 5/17/2017

Effective 5/18/2017

SMOKING POLLUTION CONTROL REGULATIONS

AND

***REGULATIONS AFFECTING MINORS ACCESS TO TOBACCO AND
NICOTINE DELIVERY PRODUCTS***

Pursuant to M.G.L. Chapter 111, Section 31, a regular meeting of the City of Westfield Board of Health held on September 7, 1994, the Board voted unanimously to adopt a new set of regulations entitled “Smoking Pollution Control Regulations and Regulations Affecting Youth Access to Tobacco”, in order to prevent public health nuisances and prevent individuals from the harmful effects of tobacco, second-hand smoke, discomfort, and illness. Updated regulations are contained herein.

DEFINITIONS

SECTION 1

For the purpose of these regulations the following shall apply.

Business: means any sole partnership, joint venture, corporation or other business entity formed for profit-making purposes including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, volunteer or other professional services are delivered.

Cigar: any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

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 any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

Employee: any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

Employer: any person, partnership, association, corporation, trust, including a municipal corporation, or non-profit entity, or other organized group of individuals which employs the services of one or more individual persons.

Health Care Institution: an individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Nicotine Delivery Product: any article or product made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine Delivery Product includes, but is not limited to, e-cigarettes.

Proprietor: one who has the legal right or exclusive title to a business. Examples include owner, corporation, partnership, trust, association, franchisee, etc.

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.

Self Service Display: a display from which individual packs or cartons of tobacco products or nicotine delivery products may be selected by a customer.

Smoking: the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted or vaporized, and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."

Tobacco and Nicotine Delivery Product Sales Permit: a permit issued by the Westfield Board of Health, which entitles an establishment to sell tobacco products in the City of Westfield for a period of one year from January 1 to December 31 of any calendar year.

Vending Machine: any machine or device designed for or used for the vending of cigarettes, cigars, tobacco, tobacco products or nicotine delivery products upon the insertion of coins, trade checks or slugs swipe cards, slips or any other form of payment.

SECTION 2 “RESERVED
SMOKING POLLUTION CONTROL
SECTION 3

3.1 “REGULATION PROHIBITING SMOKING IN CERTAIN AREAS”

It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace. Smoking is hereby prohibited in Westfield in accordance with M.G.L. Ch. 270, §22 (commonly known as the “Smoke-free Workplace Law). Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in smoking bars. The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

3.2 “REGULATIONS PROHIBITING SMOKING IN MEMBERSHIP ASSOCIATIONS IN WESTFIELD, MASSACHUSETTS”

Approved by the Westfield Board of Health on October 11, 2006.

**REGULATIONS AFFECTING MINORS ACCESS TO TOBACCO
AND NICOTINE DELIVERY PRODUCTS
SECTION 4**

Findings:

The Westfield Board of Health finds cigarette smoking and other tobacco use by minors to be a continuing problem with grave public health consequences. 90% of all smokers begin smoking before age twenty-one and more than 3,000 young people begin to smoke every day in this nation. The average age at which Massachusetts's youth are beginning to smoke is twelve (12) years. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of minors to cigarette, other tobacco products and nicotine delivery products.

Purpose:

Accordingly, the Westfield Board of Health finds and declares that the purpose of these regulations is to implement a strict and enforceable system to prevent the illegal sale of cigarettes, other tobacco products and nicotine delivery products to minors.

The successful implementation of these regulations requires a cooperative effort and mutual respect on the part of smokers, non-smokers, employers and employees.

SECTION 5

Prohibitions

5.1 Self Service Displays

Self Service Displays within the City of Westfield from which individual packs or cartons of tobacco products or nicotine delivery products may be selected by a customer will be banned as of January 1, 1996. All humidors including, but not limited to, walk-in humidors must be locked.

5.2 Tobacco and Nicotine Delivery Product Sales to Minors

1. In conformance with Massachusetts General Laws, Chapter 270, Section 6, whoever sells a cigarette, chewing tobacco, snuff or any tobacco in any of its forms to any Person under the age of twenty-one (21) or, not being his parent or guardian, gives a cigarette, chewing tobacco or snuff, or tobacco in any of its forms to any person under the age of twenty-one shall be punished according to the fine schedule set forth in Section 7 of this Regulation.
2. No person shall sell tobacco products or nicotine delivery products or permit tobacco products or nicotine delivery products to be sold to a minor, or not being the minor's parent or legal guardian, give tobacco or nicotine delivery products to a minor.
3. Each person selling or distributing tobacco products or nicotine delivery products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27. A written note or telephone communication from a parent or guardian will not be sufficient to allow a person under age twenty-one (21) to purchase a tobacco product or a nicotine delivery product.
4. All retail sales of tobacco and nicotine delivery products must be face-to-face between seller and buyer.

No person or entity selling tobacco products or nicotine delivery products shall allow anyone to sell cigarettes, other tobacco products or nicotine delivery products until such employee reads the Board of Health regulations and State laws regarding sale of tobacco. Each person selling tobacco or nicotine delivery products shall sign a statement supplied by the Health Department that states that he/she has read the State law and the City's tobacco control regulation. This signed statement is to be kept on file for review by the Board of Health representative at time of inspection. A copy of the City's Tobacco Control Regulation is to be located in each establishment for reference as needed.

5.3 Vending Machines

It shall be unlawful to sell or distribute any tobacco product or any nicotine delivery product through a vending machine or any other device used in the sale or distribution of tobacco products or nicotine delivery products within the city of Westfield.

5.4 Out-of-Package Sales Prohibited

No person or entity may sell or cause to be sold, or distribute or cause to be distributed, cigarettes out of the manufacturer's package with required health warnings. Sale or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited including single cigarettes.

5.5 Free Distribution/Samples

No person shall distribute, or cause to be distributed, any free samples tobacco product or any nicotine delivery product, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein, for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

5.6 Prohibition of the Sale of Tobacco and Nicotine Delivery 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.

5.7 Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions

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

5.8 Non-Residential Roll-Your-Own Machines:

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

Section 6

Tobacco and Nicotine Delivery Product Sales Permit

The Westfield Board of Health finds it necessary to monitor compliance of M.G.L. 270, section 7 and the sale of nicotine delivery products by permitting all tobacco and nicotine delivery product vendors in the City of Westfield.

- a. The Board of Health of the city of Westfield will issue a “Tobacco and Nicotine Delivery Product Sales Permit” that will specify the name, address, and approved location per the Board of Health of the city of Westfield or their designated agent(s) for retailers who sell tobacco products or nicotine delivery products. No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within the City of Westfield without first obtaining a “Tobacco and Nicotine Delivery Product Sales Permit” issued annually by the Westfield Board of Health.
- b. As part of the application process, the applicant will be provided with the City of Westfield Board of Health Tobacco Control Regulations. A copy of the regulations are to be kept in each establishment for reference as needed. Each applicant is required to sign a statement declaring that the applicant has read said regulations and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco and/or nicotine delivery product sales regarding both state laws regarding the sale of tobacco and this regulation.
- c. Each applicant who sells tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco and Nicotine Delivery Product Sales Permit can be issued.
- d. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Westfield Board of Health. All such permits shall be renewed annually by January 1.
- e. A separate permit is needed for each retail establishment selling tobacco and/or nicotine delivery products.
- f. Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.
- g. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell cigarettes, other tobacco products or nicotine delivery products until such employee has been provided an opportunity to read this regulation and applicable state laws.

- h. Issuance of a Tobacco and Nicotine Delivery Product Sales Permit is subject to the discretion of the Board of Health and shall be conditioned on an applicant's consent to unannounced, periodic inspection of his/her retail establishment to ensure compliance with this regulation.
- i. At any given time, there shall be no more than fifty-five (55) Tobacco and Nicotine Delivery Product Sales Permits issued in Westfield. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. 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 as issued permits are either not renewed, revoked, or are returned to the Board of Health. If no new permits are available, applicants may apply for a variance to the Board of Health which may or may not be granted at their discretion.

Non-Transferability

A "Tobacco and Nicotine Delivery Product Sales Permit" is non-transferable when ownership of a business changes hands. New owners must apply for and receive a Tobacco and Nicotine Delivery Product Sales Permit with the new owner's name and address on it before the start date of new ownership. A new owner's Tobacco and Nicotine Delivery Product Sales Permit will be given at the time of the inspection prior to opening under new ownership. If the same owner changes location a new permit will be issued with the new address. The Board of Health must be notified of the address change prior to the move so that the new permit can be issued at the time of the inspection of the new location.

SECTION 7

Suspension of Permit/Penalties:

The Board of Health of the City of Westfield shall provide written notice to the permittee of the intent to suspend a Tobacco and Nicotine Delivery Product Sales Permit. The notice shall contain the reasons for the suspension and establish a date and time for a hearing. The date of the hearing shall be no earlier than seven (7) days after the date of said notice. The permittee shall have an opportunity to be heard at such hearing and shall be notified of the Board's decision and reasons in writing.

1. The proprietor of any establishment selling tobacco or nicotine delivery products to any person under age twenty-one (21) shall be held responsible and be subject to the following penalties which shall be paid within fourteen (14) calendar days. Failure to pay fine may result in revocation of "Tobacco and Nicotine Delivery Product Sales Permit" until the fine has been paid:

a). **In the case of a first violation, the permittee shall be fined one hundred dollars (\$100) and shall be notified in writing of penalties levied for further violations.**

b). **In the case of a second violation within a 12 month period, the permittee shall be fined two hundred dollars (\$200) and shall be notified in writing of penalties levied for further violations.**

c). **In the case of a third violation within a 12 month period, the permittee shall be fined three hundred dollars (\$300) and the permit shall be suspended for seven (7) consecutive calendar days.**

d). **In the case of a fourth or subsequent violation within a 12 month period, the permittee shall be fined three hundred dollars (\$300) and the permit shall be suspended for thirty (30) consecutive calendar days.**

2. During such time that a "Tobacco and Nicotine Delivery Product Sales Permit" has been suspended for violations of this Regulation, all tobacco products and nicotine delivery products must be removed from the premises or boxed and sealed in a manner determined by the Board of Health. Any person or entity selling any tobacco products or nicotine delivery products without said permit shall be fined according to this Section until said permit is reinstated by the city of Westfield or its designated agent(s).

3. Any proprietor selling tobacco or nicotine delivery products without a valid Tobacco and Nicotine Delivery Product Sales Permit shall be fined two hundred dollars (\$200) per day.

4. Any proprietor in charge who fails to comply with any other of these provisions shall be fined fifty dollars (\$50.00) for each day the violation exists.

SECTION 8 “RESERVED”

SECTION 9

Posting

In conformance with Massachusetts General Laws, Chapter 270, Section 7, A COPY OF MASSACHUSETTS GENERAL LAWS, CHAPTER 270, SECTION 6 shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell cigarettes at retail.

The notice to be posted shall be that notice provided by the Massachusetts Department of Public Health stating that the sale of tobacco products to persons under age twenty-one (21) is prohibited. Such notice shall be at least forty-eight (48) square inches and shall be posted at each cash register in such a manner so that it may be readily seen by a person standing at or approaching the cash register. Such notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or higher than six feet. Such notice shall be placed on each cash register or at an instance of not greater than four (4) feet from each cash register.

The owner or other person in charge of a shop or other place used to sell Nicotine Delivery Products at retail shall conspicuously post a sign stating that “The sale of Nicotine Delivery Products to minors under 21 years of age is prohibited.” The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating that “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be no smaller than 8.5” by 11” and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

Whoever violates this provision shall be subject to a fine of fifty dollars (\$50). Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of ten dollars (\$10).

SECTION 10

Enforcement

The Board of Health or its enforcement officer(s) shall enforce these regulations.

SECTION 11

Severability

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstances shall be held invalid or unenforceable, the other provisions shall not be affected thereby, but shall continue in full force and effect.

EFFECTIVE DATE

This regulation shall become effective as of January 1, 1996, unless otherwise provided herein.

Date of Board of Health Vote: September 7, 1994

Revisions: January 4, 1995
October 4, 1995

Board of Health Members: William C. Aiken, Chairman
William Long, M.D., Member
Juanita Hibert, R.N., Member
Director of Public Health: Daniel Reardon
Health Inspector: Barry Searle

Revisions: March 10, 1999/April 14, 1999

Board of Health Members: Juanita Hibert, R.N, Chairperson
John Lehman, R.Ph. Member
Stan Strzempko, M.D. Member
Director of Health: Daniel Reardon
Sanitarian: Barry Searle
Tobacco Control Director: Phyllis Ratte'

Revision: June 18, 2008

Board of Health Members: Juanita Hibert, R.N. Chairperson
John Lehman, R.Ph. Member
Stan Strzempko, M.D. Member
Director of Health: Daniel Reardon
Code Enforcement Inspector: Joseph Rouse

Revision: June 13, 2011

Board of Health Members: Juanita Carnes, R.N. Chairperson
John Lehman, R.Ph. Member
Stan Strzempko, M.D. Member
Director of Health: Michael Suckau R.S.
Code Enforcement Inspector: Joseph Rouse

Revision: November 18, 2015

This revised regulation will become effective January 1, 2016.

Board of Health Members: Juanita Carnes, FNP- BC Chairperson
Michael Paquette, Pharm.D. Member
Teresa Mitchell, M.D. Member
Director of Health: Joseph Rouse
Code Enforcement Inspector: Thomas Hibert
Stephen Cipriani

Revision: May 17, 2017

This revised regulation will become effective immediately.

Board of Health Members: Juanita Carnes, FNP- BC Chairperson
Michael Paquette, Pharm.D. Member
Teresa Mitchell, M.D. Member
Director of Health: Joseph Rouse
Code Enforcement Inspector: Thomas Hibert
Stephen Cipriani