

# RESTRICTING THE SALE OF TOBACCO AND NICOTINE DELIVERY PRODUCTS IN THE TOWN OF WESTON

## **1.0 Statement of Purpose:**

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than ninety percent of all smokers begin smoking before the age of twenty-one (Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2012); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Ibid.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and whereas the sale of tobacco products and nicotine delivery products is incompatible with the mission of health care institutions because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication; now, therefore it is the intention of the Weston Board of Health to regulate the access of tobacco products and nicotine delivery products.

## **2.00 Authority:**

This regulation is promulgated pursuant to the authority granted to the Weston Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations."

## **3.00 Definitions:**

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

**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.

**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 as e-cigarettes, e-cigars, e-pipes or under any other product name.

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

**Employee:** Any individual who performs services for an employer.

**Employer:** Any individual, partnership, association, corporation, trust or other organized group of individuals, including Weston or any agency thereof, which uses the services of one (1) or more employees.

**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. ch. 112 or a retail establishment that provides pharmaceutical goods and services and subject to the provisions of 247 CMR 6.00. Health care institution includes, but is not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices and dentist offices.

**Minor:** Any individual who is under the age of twenty-one (21).

**Nicotine Delivery Product:** Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product 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 products include, but are not limited to, e-cigarettes.

**Permit Holder:** Any person engaged in the sale or distribution of tobacco products and/or nicotine delivery products directly to consumers who applies for and receives a Tobacco and Nicotine Delivery Product Sales Permit or any person who is required to apply for a Tobacco and Nicotine Delivery Product Sales Permit pursuant to these regulations, or his or her business agent.

**Person:** An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products and/or nicotine delivery products directly to consumers.

**Self Service Display:** Any display from which customers may select a tobacco product or a nicotine delivery product without assistance from an employee or store personnel, excluding vending machines.

**Tobacco Product:** Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

**Vending Machine:** Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes, any other tobacco product or any nicotine delivery product.

## **4.00 Tobacco and Nicotine Delivery Product Sales to Minors Prohibited:**

**4.01.** 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 products or nicotine delivery products to a minor.

**4.02.** In conformance with and in addition to Massachusetts General Law, 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 tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Weston Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder 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 (4) feet or greater than nine (9) feet from the floor. In addition to the notice required in this section, a notice provided by the Weston Board of Health shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco and nicotine delivery products at retail. Such notice shall state that the sale of tobacco products or nicotine delivery products to persons under the age of twenty-one (21) is illegal.

**4.03.** 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 “The sale of nicotine delivery products to minors under 21 years of age is prohibited.” The notices 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 4 or greater than 9 feet from the floor.

**4.04. Identification:** 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 twenty-one (21) years old or older. Verification is required for any person under the age of 27.

**4.05.** All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer.

#### **5.00 Control of the Sale of Tobacco Products and Nicotine Delivery Products by Health Care Institutions:**

**5.01.** No health care institution located in the Town of Weston shall sell or cause to be sold tobacco products or nicotine delivery products. Additionally, any retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, must keep nicotine delivery products in a controlled area.

#### **6.00 Prohibition Against the Sale of Tobacco Products and Nicotine Delivery Products by Educational Institutions:**

**6.01** No educational institution located in the Town of Weston shall sell or cause to be sold tobacco products or nicotine delivery products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

#### **7.00 Tobacco and Nicotine Delivery Product Sales Permit:**

**7.01.** No person shall sell or otherwise distribute tobacco or nicotine delivery products at retail within Weston without first obtaining a Tobacco and Nicotine Delivery Product Sales Permit issued annually by the Weston Board of Health.

**7.02.** As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Weston Board of Health 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 or nicotine delivery product sales regarding both state laws regarding the sale of tobacco and this regulation. Each applicant, or their designee, is required to attend a Weston Board of Health training session as a condition of receiving a Tobacco and Nicotine Delivery Product Sales Permit initially.

**7.03.** 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.

**7.04.** The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Weston Board of Health annually. All such permits shall be renewed annually by January 1<sup>st</sup>.

**7.05.** A separate permit is required for each retail establishment selling tobacco or Nicotine delivery products.

**7.06.** Each Tobacco and Nicotine Delivery Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

**7.07.** No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell cigarettes or other tobacco products or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer and provided to the Board of Health upon request, that he/she has read the regulation and applicable state laws.

**7.08.** A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco and/or nicotine delivery products must apply for a new Tobacco and Nicotine Delivery Product Sales Permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

**7.09.** Issuance of a Tobacco and Nicotine Delivery 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.

**8.00. Free Distribution:**

**8.01.** No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products.

**9.00. Out-of-Package Sales:**

**9.01.** No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

**10.00. Self Service Displays:**

**10.01.** All self-service displays of tobacco products or nicotine delivery products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. The only exception is self-service displays that are located in facilities where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.

**11.00 Vending Machines:**

**11.01.** All tobacco and/or nicotine delivery product vending machines are prohibited.

**12.00. Violations:**

**12.01.** It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco and/or nicotine delivery products.

The violator shall receive:

- In the case of a first violation, a fine of one hundred dollars (\$100.00).
- In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200.00) shall be assessed and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for ten (10) consecutive business days.
- In the case of a third or subsequent violation occurring within 24 months of the second violation, a fine of three hundred dollars (\$300.00) shall be assessed and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days or may be permanently revoked.

**12.02.** Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco and Nicotine Delivery Product Sales Permit for thirty (30) consecutive business days.

**12.03.** In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products or nicotine delivery products directly to a consumer while his or her permit is suspended shall be subject to a fine of three hundred dollars (\$300.00) for each day a sale occurs and the suspension of all board of health issued permits for thirty (30) consecutive business days.

**12.04.** The Weston Board of Health shall provide notice of the intent to suspend or permanently revoke a Tobacco and Nicotine Delivery 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 Weston Board of Health may suspend or permanently revoke the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred. For the duration of a suspension, all tobacco products and nicotine delivery products shall be removed from the retail establishment or be placed in boxes that are sealed and moved out of the public area of the establishment to a separate room that is accessible only to employees. All tobacco products and nicotine delivery products shall be removed from the retail establishment upon permanent revocation of the Tobacco and Nicotine Delivery Product Sales Permit. Failure to remove all tobacco products and nicotine delivery products shall constitute a separate violation of this regulation.

**13.00. Non-Criminal Disposition:**

**13.01.** Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue.

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

**14.00. Enforcement:**

**14.01.** Enforcement of this regulation shall be by the Board of Health of Weston or its designated agent(s).

**14.02.** Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of

Health of Weston or its designated agent(s) and the Board shall investigate.

**15.00. Severability:**

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

**16.00. Effective Date:**

This regulation has been voted on and adopted by the Weston Board of Health on February 9, 2016 and shall become effective April 30, 2016.