Worcester Board of Health
Tobacco Regulations

WHEREAS, the Board of Health ("BOH") of the City of Worcester ("City") is charged with the regulation and oversight of retail tobacco establishments pursuant to the authority granted by Chapter 120 of the Acts of 2014 and Article Six of the Home Rule Charter; and

WHEREAS, the City Council of Worcester has enacted the Tobacco Products Control Ordinance, pursuant to Chapter 8, § 3 of the General Revised Ordinances of 2008, to protect and promote public health through regulation of the sale of tobacco products; and

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]; and

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[2]; and

WHEREAS, the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste"; [3] and

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[4]; and

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;[5]

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[6]; and

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[1] U.S. Center for Disease Control and Prevention (CDC), *Health Effects of Cigarette Smoking Fact Sheet* (2021), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

[2] 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/).

[3] 310 CMR 30.136

[4] 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).

[5] 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).

[6] 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*

WHEREAS, the Board of Health has determined that updated regulations are necessary and appropriate to realize the protection and promotion of public health while also balancing the business demands of a growing city; and

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";[7] and

WHEREAS, these regulations aim to reduce tobacco use by prioritizing prevention, cessation support, and youth protection, while improving public health outcomes and providing local businesses with the opportunity to engage in retail tobacco sales; and

WHEREAS, it is the intention of the Board of Health to regulate the sale of tobacco products;

NOW THEREFORE, pursuant to the authority granted to Worcester Board of Health by M.G.L. c.111, §31, and the requirements set forth in Chapter 8, § 3, of the General Revised Ordinances related to Tobacco, the Worcester Board of Health hereby repeals the Board of Health Regulations related to Restricting the Sale of Tobacco Products, effective September 1, 2016, Restricting the sale of Cigars and Flavored Tobacco Products, effective January 1, 2019, and, Restricting the Number of Tobacco Product Sales Permits, effective October 23, 2023, and replaces said regulations with the following updated regulations. All other existing Board of Health Regulations shall remain effective.

A. DEFINITIONS

For the purpose of this regulation ("Regulations"), the definitions found in M.G.L. Chapter 270 and other applicable state laws, Chapter 8, § 3(b) of the General Revised Ordinances of Worcester shall apply, in addition the following words shall have the following meanings.

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, which may be used by the consumer to wrap or contain loose tobacco or other fillers.

Electronic Nicotine Delivery System: An electronic device, whether for 1-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 systems that rely on vaporization or aerosolization. "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. "Electronic

Density 3 Years After License Regulations in Philadelphia, Pennsylvania (2012-2019), 110 (4) Am J. Pub. Health 547 (2020) (doi: 10.2105/AJPH.2019.305512); A.E. Myers et al., *A comparison of three policy approaches for tobacco retailer reduction*, 74 Prev. Med. 67(2015) (doi: 10.1016/j.ypmed.2015.01.025).

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

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. "Electronic nicotine delivery system" shall not include a product that has been approved by the United States Food and Drug Administration for sale or use as a tobacco cessation product or for other medical purposes and that is marketed and sold or prescribed exclusively for that approved purpose.

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.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the City.

Minor: Any individual under the age of 21.

Permit: The Tobacco Product Sales Permit issued by the board of health pursuant to this regulation.

Permit Holder: Any person engaged in the sale or distribution of tobacco products that applies for and receives a Tobacco Product Sales Permit, or any person that is required to apply for a Tobacco Product Sales Permit, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retailer: Any person or entity that owns, operates, or manages an establishment engaged in the sale or distribution of tobacco products, including but not limited to convenience stores, gas stations, liquor stores, and other similar businesses.

Schools: Public or private elementary and secondary schools.

Smoke Shop (also known as "Adult-only Retail Tobacco Store" in G.L. c. 270): An establishment that is not adjoined, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Worcester Board of Health and applicable state licenses. The establishment shall not allow anyone under the age of 21 to work at the establishment.

Smoking Bar: an establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Worcester Board of Health; and (v) maintains a valid permit issued by the Massachusetts Department of Revenue to operate as a Smoking Bar. "Smoking Bar" shall include, but is not limited to, those establishments that are commonly known as "cigar bars" and "hookah bars."

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, vaped, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product.

B. TOBACCO SALES TO PERSONS UNDER THE MINIMUM LEGAL SALES AGE PROHIBITED

1. The minimum legal sales age in the city of Worcester is twenty-one (21)**.**

2. No Retailer shall sell or otherwise distribute a tobacco product to a minor.

3. **Required signage:** Retailers who sell or permit the sale of tobacco products shall comply with applicable local and state signage requirements, including but not limited to those required in M.G.L. c. 270 and 105 CMR 665.015. Retailers shall conspicuously post signage provided by the City that discloses current referral information about smoking cessation.

4. All Smoking Bars and Smoke Shops shall post signage, in the form developed and made available by the City, on the exterior of the door providing entrance to the Smoke Shop 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."

5. All Smoking Bars and Smoke Shops that allow for any onsite consumption of tobacco products shall post signage, in the form developed and made available by the City, on the exterior of the door providing entrance to the Smoke Shop 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.

6. Retailers shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to anyone under the age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches 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. 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.

7. **Identification:** Each Retailer selling or distributing tobacco products shall verify the age of the purchaser by means of valid government-issued photographic identification showing the purchaser is not a minor. Verification is required for any person under the age of twenty-seven.

8. 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.

9. No person shall sell or otherwise distribute tobacco products within the City of Worcester without first obtaining a Tobacco Product Sales Permit issued annually by the Board of Health. Only owners of establishments with a permanent, non-mobile location in Worcester are eligible to apply for a permit and sell tobacco products at a specified location in Worcester.

C. PROHIBITIONS

1. No Retailer may sell or distribute any cigarette package that contains fewer than twenty cigarettes, including single cigarettes.

2. Self-service displays of tobacco 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 minor is present, or permitted to enter, at any time.

3. Tobacco vending machines are prohibited.

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

5. No health care provider, institutional or non-institutional, shall sell tobacco products or allow tobacco products to be sold on its premises. No retail establishment that operates, maintains, or employs a health care provider within it, such as a pharmacy or drug store, shall sell tobacco products or cause tobacco products to be sold.

6. No educational institution shall sell or allow tobacco products to be sold on its premises. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

7. The sale or distribution of tobacco products in any building or facility owned or operated by the City shall be prohibited, except as authorized by the City Council.

8. No Retailer shall:
   a) Distribute any free samples of tobacco products;
   b) Accept or redeem any coupon that provides any tobacco product without charge or for less than the listed or non-discounted price;
   c) Sell a tobacco product to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco product without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product;
   d) Sell or cause to be sold blunt wrap;
   e) Sell or distribute tobacco products in any form other than an original factory-wrapped package, including the repackaging or dispensing of any tobacco product for retail sale.

9. No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, as defined herein, except in Smoking Bars for on-site consumption only.

10. 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 Smoke Shops and Smoking Bars for sampling and on-site consumption, respectively.

11. Retailers who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, Massachusetts Hazardous Waste Regulations.

D. CIGAR SALES

1. No person shall sell or distribute 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 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.
4. The BOH reserves the right to amend these prices from time to time.

E. RETAIL TOBACCO PERMIT REQUIREMENTS

1. As part of the Tobacco Product Sales Permit application and renewal process, all applicants will be provided with these BOH Tobacco Regulations through the permitting system. Each applicant is required to electronically sign a statement declaring that they have read the Regulations and acknowledge responsibility for instructing all employees who will be involved in tobacco product sales on all applicable federal, state, and local laws, as well as these Regulations.

2. No permit holder shall allow an employee to sell tobacco products until the employee acknowledges, in writing, receipt of the Regulations, Ordinance, and applicable state, a copy of which will be placed on file in the office of the employer and made available to the BOH, or its designee, upon request.

3. Applicants shall provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a local permit may be issued.

4. Issuance of permits shall be conditioned on an applicant's consent to unannounced, periodic inspections of the retail establishment to ensure compliance with these Regulations and all applicable laws and regulations.

5. Permits shall be issued annually and shall be valid for one calendar year beginning on the first day of January and ending on the thirty-first day of December. Permits are renewable annually to the same permit holder each year by the thirty-first day of December, upon submittal of an application in compliance with these Regulations and the applicable Ordinance. Any permit holder that fails to renew a permit by the thirty-first day of December and continues to operate shall be subject to penalty and enforcement under these Regulations.

6. A separate permit is required for each retail establishment selling tobacco products.

7. Permits shall be displayed at the retail establishment in a conspicuous location and consistent with these Regulations.

8. Permit holders shall have no property interest in any permit issued hereunder.

9. A permit will not be renewed if the permit holder has outstanding fines, penalties or fees due to the city of Worcester for any reason unless such fines, penalties or fees are the subject of a lawful and pending legal appeal.

10. A permit will not be renewed or transferred if the permit holder has sold a tobacco product to a minor three (3) times within the previous twenty-four (24) months and any appeal periods have expired for any such violation.

F. MAXIMUM NUMBER OF TOBACCO PRODUCT SALES PERMITS

1. At any given time, there shall be no more than two hundred thirty-five (235) Tobacco Product Sales Permits, twenty-two (22) of which may be issued to Smoke Shops, and fifteen (15) of which shall be issued to Smoking Bars pursuant to Section 3(e) of Chapter 8 of the General Revised Ordinances and M.G.L c. 270.

   a) There shall be no more than twenty-two (22) Smoke Shop Permits issued in Worcester.

   b) Density. A new Retail Tobacco Product Sales Permit shall not be issued to an applicant within five hundred (500) feet of an existing Retail Tobacco Product Sales Permit or an existing public or private elementary or secondary school as measured in a straight line from the nearest point of the property line of the school to the nearest point of the property line of the retail establishment.

   c) Exemption. Applications for a Retail Tobacco Product Sales Permit at a location which held a Retail Tobacco Product Sales Permit within the previous three (3) years as of the effective date of this Regulation shall be exempt from the Retail to Retail 500-foot buffer. This exemption is applicable to the Retail to Retail 500-foot density regulation. No other exemption of these Regulations, including of the 235 total Tobacco Product Sales Permit cap, shall be permitted.

2. Transfer of Permits.

   a) Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition shall apply, within sixty (60) days of such sale or acquisition, for a transfer of the permit, in accordance with these Regulations and any applicable local and state rules and regulations.

   b) Permits may be transferred incident to the relocation of a retail establishment by the existing permit holder. Permit transfer requests may be made in writing to the Worcester Division of Public Health with the requested change in license address. A new permit may be issued if the new location complies with all requirements of these Regulations including density requirements, and any applicable state rules and regulations, including outstanding penalties, are satisfied in full.

3. Smoking Bars Regulated.

   a) There shall be no more than fifteen (15) Smoking Bar Permits issued in Worcester.

   b) Any permit holder, or new Applicant, who fails to renew/transfer their Permit, within sixty (60) days of the expiration, or purchase of a business, shall be treated as a first-time applicant.

   c) Density. A new Smoking Bar Permit shall not be issued to an applicant within five hundred (500) feet of an existing public or private elementary or secondary school as measured in a straight line from the nearest point of the property line of the school to the nearest point of the property line of the establishment.

G. INCORPORATION OF STATE LAWS AND REGULATIONS

The sale or distribution of the products defined herein must comply with those provisions found at General Laws, Chapter 270, §§ 6-7, and 27-29 and Chapter 112, §61A. Further, the sale or distribution of tobacco products 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, and all applicable state, local and federal laws and regulations.

H. VIOLATIONS

Fines, Penalties and Enforcement Authority. Enforcement of this Regulation shall be by the Worcester Board of Health or its designated agent(s), including employees of the Department of Health and Human Services, the Worcester Police Department, and any authorized agent or officer of the city of Worcester on any public property, on any private property which is subject to a permit required by these Regulations or any private property which is open to public use.

This Regulation may be enforced by civil process, criminal process or by non-criminal disposition as provided in General Laws, Chapter 40, § 21D, and further, where applicable, as set forth in General Laws, Chapter 270, §§28 and 29. Every day, or part thereof, in which any person is in violation of these Regulations, or any applicable Ordinance, shall constitute a single and separate offense.

Permit Holders are required to comply with any and all local, state and federal laws and regulations and any violation of such shall be grounds for the BOH to modify, suspend or revoke a permit. In addition to the monetary fines and penalties described herein, any person who violates any provisions of these Regulations shall be subject to the suspension, modification or revocation of the Tobacco Product Sales Permit issued by the BOH.

a) Consistent with 105 CMR 665.055, the BOH may, after written notice to a Retailer, which notice shall contain the reasons therefore and establish a time and date for a hearing, modify, suspend or revoke a Tobacco Product Sales Permit, upon satisfactory proof that a violation of any law or regulation of the Board of Health, the city of Worcester, or of the Commonwealth has occurred. The Retailer shall have an opportunity to be heard at such hearing and shall be notified in writing of the BOH's decision and the reasons therefore in writing.

b) For violations of the sections of these Regulations that incorporate G.L. c. 270, §§6, 28, 29 and 105 CMR 665.000, the following penalties shall apply:

   i. In the case of a first violation, a fine of one thousand dollars ($1,000.00) for a State Law violation shall be issued and, if the violation is the sale of a tobacco product to a Minor the Tobacco Product Sales Permit shall be suspended for three (3) consecutive business days;

   ii. In the case of a second violation within thirty-six (36) months of the date of a previous violation, a fine of two thousand dollars ($2,000.00) for a State Law violation shall be issued and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days;

   iii. 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 shall be issued and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

c) For all other violations specific to local regulations and ordinances, the following penalties shall apply:

   i. In the case of a first violation, a fine of three hundred dollars ($300);

   ii. In the case of a second violation within thirty-six (36) months of a previous violation, a fine of four hundred dollars ($400) and the Tobacco Product Sales Permit shall be suspended for 7 consecutive business days;

   iii. In the case of three or more violations within thirty-six (36) months, a fine of five hundred dollars ($500) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.

d) In the case of four (4) or more violations or repeated, egregious violations of these Regulations or any applicable local or state law or regulation, within a 36 month period, the BOH may hold a hearing in accordance with these Regulations and 105 CMR 665.000, and after such hearing, permanently modify or revoke the tobacco permit.

e) Fraud, misrepresentation, false material statement, concealment, or suppression of the facts by a permit holder in connection with an application, or renewal, for a Tobacco Product Sales Permit shall be grounds for denial or revocation of a permit.

f) Failure to cooperate or interfere with inspections pursuant to these Regulations shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

g) Any permit holder who engages in the sale or distribution of tobacco products during a suspension of the permit, or otherwise violates a condition of the permit issued by the Board of Health, or any applicable regulation, shall be subject to a suspension of the tobacco retail permit for up to thirty (30) consecutive days. Failure to remove all tobacco products during a suspension shall constitute a separate violation of this Regulation with each day constituting a separate offense punishable by a fine or penalty of $300.

Effective Date:

Date of Adoption: July 13, 2026.

This regulation shall take effect on July 15, 2026.

Frances M. Cardoso, Chair

Michael C. Perotta (Member)

Patricia J. Lynch, Member