

**Regulation of the Worcester Board of Health  
Restricting the Sale of Cigars and Flavored Tobacco Products**

**A. Statement of Purpose:**

Whereas, the City of Worcester Board of Health makes the following findings:

1. There exists conclusive and voluminous evidence that tobacco causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat;
2. The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development, and that it is addiction to nicotine that keeps youth smoking past adolescence;
3. There are an estimated 31,488 smokers who reside in the city of Worcester;
4. 18.1% of adults in the city of Worcester over 18 years of age smoke, a level which is 21% higher than the statewide average of 15%;
5. Lung cancer incidence is 19% higher among males in Worcester compared to the state level – The age-adjusted lung cancer incidence (per 100,000) for males is 97.6 in Worcester and 82.2 in Massachusetts;
6. Lung cancer incidence is 19% higher among females in Worcester compared to the state level - The age-adjusted lung cancer incidence (per 100,000) for females is 70.8 in Worcester and 665.5 in Massachusetts;
7. Mortality from lung cancer is 17% higher in Worcester compared to Massachusetts;
8. Tobacco causes an estimated 438,000 deaths annually in the United States and over 8,000 deaths annually in the commonwealth of Massachusetts;
9. The death rate of Worcester residents from tobacco on a per capita basis is approximately 250 individuals annually, or five human lives lost per week.
10. At least one-half of all smokers begin smoking before the age of eighteen and an estimated 3,000 minors begin smoking every day in the United States;
11. The sale of tobacco 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;
12. There are certain tobacco products such as blunt wraps that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia;
13. Among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station;
14. 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;

15. The U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle and high school students tripled from 2013 to 2014;
16. Nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;
17. The Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an “acutely hazardous waste” (310 CMR 30.136);
18. In a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one;
19. According to the CDC’s youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days was 10.8% in 2013;
20. In Massachusetts, youth use of cigars and smokeless tobacco (12.3%) is higher than the rate of current cigarette use (10.7%) for 2013 and has remained elevated since 2009;
21. 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.”;

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

Whereas, the Worcester Board of Health has determined that additional regulations are necessary and appropriate in order to realize the protection and promotion of the public health contemplated;

Now therefore, the Worcester Board of Health is compelled to further regulate the sale of tobacco products.

**B. Authority:**

This regulation is promulgated pursuant to the authority granted to the Worcester Board of Health by Chapter 120 of the Acts of 2014 and Article Six of the Home Rule Charter.

**C. Definitions:**

For the purpose of this regulation, the definitions found in Chapter 8, § 3 (b) of the Revised Ordinances of the City of Worcester shall apply; and additionally the following words shall have the following meanings:

**Characterizing flavor:** A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

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

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

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

**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.

**D. 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 Worcester.
4. The Worcester 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.

**E. Sale of Flavored Tobacco Products Prohibited:**

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and adult-only retail tobacco stores.

**F. Violations:**

**1. Fines, Penalties and Enforcement Authority.**

- (a) This regulation may be enforced by civil process, criminal process or by non-criminal disposition as provided in General Laws, Chapter 40, § 21D.
- (b) The provisions of this regulation may be enforced by any authorized agent or officer of the city of Worcester on any public property, on any private property which is subject to any permit required by this regulation or any private property which is open to public use.
- (c) Every day or part thereof in which any person is in violation of these provisions shall constitute a single and separate offense.

(d) Any person who violates any provision in any of the following subsections of this regulation:

(D) Cigar Sales Regulated

(E) Sale of Flavored Tobacco Products Prohibited

shall be punished with a civil penalty of \$300 or a criminal fine of up to \$300.

- (e) In addition to the monetary fines and penalties described above, any person who violates any of the provisions of subsections (D) or (E) of this regulation shall be subject to the suspension or revocation of any permit issued under authority of those subsections by the board of health as further provided herein.
- (f) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the permit for up to thirty consecutive business days.
- (g) In addition to the fines and penalties set forth above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended or revoked shall be subject to the suspension or revocation of all board of health issued permits for thirty consecutive business days.
- (h) The director shall provide notice of the intent of the board of health to suspend or revoke any permit, which notice shall contain the reasons therefor together with documentation of the alleged violations. The notice shall establish a time and date for a hearing which date shall be no earlier than seven days after the date of said notice. The hearing shall be conducted by the board of health, or its designee, as the board in its sole discretion may determine. The alleged violator, permit holder or its business agent and legal counsel shall have an opportunity to be heard at such hearing. The alleged violator or permit holder shall be notified of the decision and the reasons therefore in writing. For purposes of any such suspension or revocation, the board of health, or its designee, shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the General Laws for the same offense. All tobacco products shall be removed immediately from the retail establishment upon suspension or revocation of any tobacco sales permit. Failure to remove all tobacco products shall constitute a separate violation of this regulation with each day constituting a separate offense punishable by a fine or penalty of \$300 or by injunctive relief.

**V. Effective Date:**

Date of Adoption: July 30, 2018, 2018

This regulation shall take effect on January 1, 2019, ~~2018~~.

  
  


  
