

TOWN OF WEBSTER TOBACCO REGULATIONS

SECTION 5.1: DECLARATION OF POLICY AND PURPOSES

There exists conclusive evidence that tobacco smoke causes cancer, lung cancer, respiratory diseases, cardiovascular disease, negative birth outcomes, allergies, gum disease, as well as irritations to the eyes, nose, mouth and throat to both the smoker and nonsmoker exposed to second hand smoke.

Ongoing research further attests to the health hazards of second-hand smoke (ETS). Elimination of second-hand smoke will substantially prevent the amount of severe headaches, upper respiratory problems, cancer and heart-related deaths.

The use of so-called smokeless tobacco has been shown to cause gum disease, cancer and heart-related disease.

Evidence further demonstrates that tobacco is extremely addictive. More than ninety percent (90%) of all smokers begin smoking before the age of eighteen (18) (the minimum age a patron must be for a retailer to sell tobacco in the Commonwealth) and an estimated three thousand (3,000) minors begin smoking every day in the United States. There is therefore, an important health need to reduce easy access to tobacco products by youths through strict enforcement of the state laws prohibiting sales to minors (MGL C. 270, § 6 & 6A).

5.2: AUTHORITY

This regulation is promulgated under the authority granted to the Webster Board of Health under Massachusetts General Laws (MGL), Chapter 111, Sections 31 that ‘board of health may make reasonable health regulations.’ It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22 (2) (j) which states in part that “nothing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or ...health...regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth...or political subdivision of the commonwealth.”

5.3: ADOPTION OF REGULATION

These amendments are hereby adopted by vote of the Board of Health of the Town of Webster on February 28, 2011. These amendments shall supersede all previous Board of Health amendments or regulations pertaining to the use and sale of tobacco and tobacco products in the Town of Webster, MA.

MGL Chapter 270 § 22: Smoking in Public Places and MGL Chapter 270 § 6: Tobacco; sale or gift to minors, and MGL Chapter 270 § 6A: Sale of cigarette rolling papers to minors, and 105 CMR 661.000: Regulations Implementing chapter 270 § 22, are hereby adopted as a local regulation for the Town of Webster with the following superseding amendments:

5.4: DEFINITIONS

The definitions for the following terms shall be struck and replaced with:

- (1) Business Agent: An individual who has been designated by the owner or operator of any membership association or smoking bar to be the manager or otherwise in charge of said membership association or smoking bar.
- (2) E-Cigarette: Any electronic delivery product composed of a mouthpiece, heating element, batter and or electronic circuits that provides a p vapor of liquid nicotine to the user, or relies on vaporization of any liquid or sold nicotine. This term shall include such devises whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name or design. E-cigarettes are a tobacco product within the definition of these regulations.
- (3) Employee: An individual or person who performs a service whether for compensation or not for an employer at the employer's workplace, including a volunteer, a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimis* amount of time.
- (4) Employer: An individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of 1 or more employees.
- (5) Enclosed: A space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by 1 or more doors, including but not limited to an office, function room or hallway.
- (6) Food Establishment: A place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes such place regardless of whether consumption is or off premises and regardless of whether there is a charge for food. The term includes, but is not limited to, delicatessens that offer prepared food in individual service portions, mobile food units, pushcarts and catering operations. The term does not include residential kitchens, retail food stores or supply vehicles.
- (7) Membership Association: A not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.
- (8) Minor: A person less than 18 years of age.
- (9) Nicotine delivery product: Any article produced or manufactured wholly or in part of a tobacco plant or a tobacco substitute; or otherwise containing nicotine or other products of t he tobacco plant that is expected or intended for human consumption. Nicotine delivery devise shall not include 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 cessation or

harm reduction product or for other medical purposes and which is being marketed and sold solely for that purpose.

- (10) Non Smoking Area: any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees or others is prohibited.
- (11) Outdoor space: An outdoor area, open to the air that is not enclosed by a wall or side covering.
- (12) Paraphernalia: Merchandise oriented towards users of marijuana and other illegal drugs including but not limited to: blunt wrappers, rosebud glass tubes or other non-traditional tobacco smoking apparatus.
- (13) Restaurant: Any establishment serving food.
- (14) Retail tobacco store: This definition shall be struck.
- (15) Smoking bar: An establishment that s primarily is engaged in the retail sale of tobacco products from consumption by customers on the premises and is required by MGL Chapter 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 limited to those establishments that are commonly known as “cigar bars” and “hookah bars”.
- (16) Smoking or smoke: The lighting or vaporizing of a cigar, cigarette, pipe, nicotine delivery product, E-cigarette, or other tobacco product or possessing a lighted cigar, cigarette, pipe, nicotine delivery product, E-cigarette, or other tobacco or non-tobacco product designed to be combusted or vaporized and inhaled.
- (17) Tobacco and tobacco products: Cigarettes, cigars, pipe tobacco, bulk tobacco, chewing tobacco, snuff or tobacco in any of its forms including e-cigarettes and other nicotine delivery products.

5.6: PROHIBITION OF USE OF TOBACCO PRODUCTS IN PUBLIC PLACES AND MEMBERSHIP ASSOCIATIONS AND SMOKING BARS

5.6.1: In addition to those locations defined in MGL Chapter.270 § 22: Smoking in Public Places and 105 CMR 661.000: Regulations Implementing chapter 270 §22 smoking shall be prohibited in the following locations

- (1) There shall be no smoking within eight (8) feet of any entranceway of any space designated by MGL Chapter 270 § 22: Smoking in Public Places, 105 CMR 661.000: Regulations Implementing Chapter. 270 § 22, or these regulations as a “no smoking area”.
- (2) No person shall smoke in any sports arena, court, ball field, theatrical or performing venue, or other venue, whether an enclosed or outdoor space, where athletes, actors, or other entertainers perform or where persons gather to view performances, competitions or other entertainments.
- (3) No person shall smoke in private residences during such time when the residence is utilized as part of a business that has employees, use volunteers, allows access by clients or allows access by the general public.
- (4) No person, in selling, vending, or distributing any tobacco, e-cigarettes, or nicotine delivery product, shall allow sampling of the product.
- (5) No person, employer, or other person having control of any premises shall permit a person to smoke where smoking is prohibited by MGL Chapter 270 § 22: Smoking in Public Places, 105 CMR 661.000: Regulations Implementing chapter.270 § 22, or these regulations.
- (6) Smoking is prohibited in the enclosed areas of smoking bars and membership associations, also known as private clubs.

- (7) No person, firm, corporation establishment agency or other entity shall sell, vend display or otherwise provide paraphernalia within the Town of Webster.
- (8) It shall be unlawful for any person having control of premises upon which smoking is prohibited by this regulation, or the business agent or designee of such membership association or smoking bar, to permit a violation of this regulation.
- (9) Posting Notice of Prohibition:
Every membership association or smoking bar in which smoking is prohibited by and under the authority of this regulation shall conspicuously display in the premises 'No Smoking' signs provided by the Massachusetts Department of Public Health and available from the Webster Board of Health or the international 'No Smoking' symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Webster Board of Health.

5.7: TOBACCO VENDING

5.7.1: Permits

- (1) No person, firm, corporation establishment agency or other entity shall sell, vend or otherwise provide tobacco, e-cigarettes or nicotine delivery products within the Town of Webster without a valid, current Tobacco Sales Permit issued by the Webster Board of Health
- (2) No Tobacco Sales Permit holder shall allow any employee to sell tobacco, e-cigarettes, or nicotine delivery products until such employee reads the Board of Health regulations and state laws regarding sale of tobacco and signs a sworn statement, a copy of which will be placed on file in the office of the employer, that he/she understands and will uphold the regulations
- (3) Issuance of a Tobacco Sales Permit shall be conditioned on applicants consent to unannounced, periodic inspections of his or her retail establishment to ensure compliance with this regulation
- (4) The application cost for the annual Tobacco Sales Permit shall be determined and set as adopted and thereafter amended in of the Town of Webster Board of Health Code of Regulations §18:

5.7.2 Fees

- (5) Permits renewed after the effective date are subject to a late fee established and set as adopted and thereafter amended in of the Town of Webster Board of Health Code of Regulations §18: Fees.
- (6) Tobacco Sales Permit shall be specific as to location and permit holder. Each location shall require a separate Tobacco Sales Permit.
- (7) A Tobacco Sales Permit shall be renewable annually on July 1st
- (8) A Tobacco Sales Permit shall not be transferable as to location or permit holder
- (9) All required permits shall be displayed in a conspicuous manner, visible to patrons of the establishment.

5.7.3:PROHIBITED PRACTICES FOR SALE OR DISTRIBUTION

- a. It shall be a violation to sell, vend or otherwise distribute tobacco products, e-cigarettes, or nicotine delivery products from a mobile or non-permanent location.
- b. No person, firm, corporation establishment agency or other entity shall sell, vend display or otherwise provide paraphernalia within the Town of Webster.
- c. It shall be a violation to vend or otherwise distribute free samples of tobacco products, e-cigarettes, or nicotine delivery products
- d. It shall be a violation to sell, vend or otherwise distribute tobacco products e cigarettes, or nicotine delivery products from a mobile or non-permanent location.

- e. It shall be a violation to repackage for sale, vending or other distribution, any tobacco products, e-cigarettes, or nicotine delivery products, or to sell vend or distribute any cigarette package that contains fewer than 20 cigarettes, including single cigarettes.
- f. No tobacco products, e-cigarettes, or nicotine delivery products on display shall be accessible to customers or the general public. All self-service displays of tobacco products, e-cigarettes, or nicotine delivery products are prohibited.

5.8: YOUTH ACCESS - TOBACCO SALES TO MINORS PROHIBITED POSITIVE IDENTIFICATION

- 1. It shall be a violation to sell, vend, or otherwise distribute tobacco, e-cigarettes, or nicotine delivery product to persons under 18 years of age
- 2. All employees selling cigarettes, chewing tobacco or other tobacco, e-cigarettes, or nicotine delivery products in any form will positively establish the purchaser's age as eighteen (18) years or older by means of a government issued photographic identification containing the bearer's date of birth.

5.9: PENALTIES

a. VENDING, SELLING, OR DISTRIBUTING WITHOUT A VALID PERMIT:

Any person selling tobacco, e-cigarettes, or nicotine delivery products at retail without a valid Tobacco Sales Permit shall be punished by a fine of one hundred dollars (\$100.00) each day a person or establishment sells tobacco or products at retail without a valid Tobacco Sales Permit shall constitute a separate violation

b. VIOLATIONS OF PROHIBITED PRACTICES FOR SALE OR DISTRIBUTION

Any person or establishment who violates § 5.7.2 of this code: **PROHIBITED PRACTICES FOR SALE OR DISTRIBUTION** shall be punished by a fine of one hundred dollars (\$100.00). Each day a person or establishment violates § 5.7.2 of this code shall constitute a separate violation.

c. SELLING, VENDING OR DISTRIBUTING TO MINORS

Any person who sells a cigarette, chewing tobacco, snuff, or any tobacco, e-cigarettes, or nicotine delivery products in any of its forms to any person under the age of eighteen (18) or, not being his/her parent or guardian, gives a cigarette, chewing tobacco, snuff, tobacco, e-cigarettes, or nicotine delivery products in any of its forms to any person under the age of eighteen (18), shall be punished according to and in conformance with MGL Chapter. 270, § 6 & 6A, as it exists and may hereafter be amended with the following local amendments:

1st offense: \$100 fine

2nd offense within 24 months of first offense: \$200 fine and 7 day suspension of the Webster Retail Tobacco Sales Permit.

3rd offense within 24 months of first offense: \$300 fine, and 30 day suspension of Webster Retail Tobacco Sales Permit.

4th offense within 24 months of first offense: Suspension of Webster Retail Tobacco Sales Permit

6.0: NOTIFICATION

The Webster Board of Health shall provide notice of the intent to suspend or revoke a tobacco sales permit. Said notice shall contain the reasons therefore and establish a time and date for a hearing. The permit holder or his/her agent shall have an opportunity to be heard and present evidence at such hearing. Following said hearing, the permit holder shall be notified of the Board of Health decision and reasons therefore in writing.

6.0.1: SUSPENSION AND REVOCATION OF PERMIT

If a retailer's Webster Retail Tobacco Sales Permit is suspended or revoked the retailer's must remove all tobacco products from sales area(s). Retailer's whose permit is suspended must also post a sign supplied by the Board of Health at all customer entrances and at all points of sale, which notifies the public that the store is prohibited from selling tobacco products until further notice.

6.1: AUTHORITY FOR ENFORCEMENT

Webster Police Department, Webster Board of Health and their agents and designees are hereby authorized to enforce this code

6.2: SEVERABILITY

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.

6.3: CONFLICT WITH OTHER LAWS AND REGULATIONS

Notwithstanding the provisions of the foregoing Section 5.6 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable to fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire, health or other regulations.

These regulations were adopted by the Board of Health on February 28, 2011.

These regulations were adopted by the Board of Health on April 2, 2012.