

## **Section 5: Smoking Regulations**

### **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 eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1(Nov. 2000); 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 (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will reduce tobacco initiation, particularly among adolescents 15 – 17, and will improve health across the lifespan and save lives; and whereas sales of flavored little cigars increased by 23% between 2008 and 2010 and many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth; and whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be "starter" products that help establish smoking habits that can lead to long-term addiction; 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 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 Wareham Board of Health to regulate the access of tobacco products.

- 1. Authority:** This regulation is promulgated pursuant to the authority granted to the Wareham Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations".
- 2. Definitions:** For the purpose of this regulation, the following words shall have the following meanings:
  - A. **Blunt Wrap:** Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.
  - B. **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 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.
  - C. **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.
- D. Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.
  - E. 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.
  - F. 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.
  - G. Distinguishable: Perceivable by either the sense of smell or taste.
  - H. Employee: Any individual who performs services for an employer.
  - I. Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including Wareham or any agency thereof, which uses the services of one (1) or more employees.
  - J. 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.
  - K. 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.
  - L. Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in Wareham.
  - M. 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.

- N. Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.
- O. 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 directly to consumers.
- P. Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Wareham Board of Health.
- Q. 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.
- R. Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.
- S. 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".
- T. Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, 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.
- U. 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 Nicotine Delivery Products.

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

- A. No person shall sell tobacco or nicotine delivery products or permit tobacco or nicotine delivery products to be sold under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products or nicotine

delivery products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Wareham is twenty-one (21).

- B. 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 Wareham 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. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
- C. 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 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 "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.
- D. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Wareham Board of Health that discloses current referral information about smoking cessation.
- E. Identification: Each person selling or distributing tobacco 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.
- F. All retail sales of tobacco or Nicotine Delivery Products must be face-to-face between the seller and the buyer.

#### **4. Tobacco and Nicotine Delivery Product Sales Permit:**

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

- B. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Wareham 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 and 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 Wareham Board of Health annually. All such permits shall be renewed annually on or before December 31.
- E. A separate permit is required for each retail establishment selling tobacco 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 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, that he/she has read the regulation and applicable state laws.
- H. A Tobacco and Nicotine Delivery Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco or Nicotine Delivery Products must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- I. 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.
- J. A Tobacco and Nicotine Delivery Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits (a) at any given time, there shall be no more than forty (40) Tobacco and Nicotine Delivery Product Sales Permits issued in the town of Wareham. No permit renewal will be denied based on the requirements of this subsection except any permittee who has failed to renew their permit by January 31 will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or Nicotine Delivery Products. 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-serve" basis as issued permits are either not renewed or are returned to the town. (b) As of January 1, 2016, the town of Wareham shall begin reducing the number of issued Tobacco and Nicotine Delivery Product Sales Permits to no more than

- thirty-seven (37) permits. No permit renewal will be denied based on the requirements of this subsection except any permittee who has failed to renew their permit by January 31 will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or Nicotine Delivery Products. New applicants who are applying at a time when the maximum number of issued permits has been reached will be placed on a waiting list and will be eligible to apply for a permit on a “first-come, first-serve” basis when the number of issued permits decreases to fewer than thirty-seven (37) permits.
- K. A Tobacco and Nicotine Delivery Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant’s business premises.
- 5. Free Distribution:** No person shall distribute, or cause to be distributed, any free samples of tobacco products or Nicotine Delivery Products. No person shall redeem or honor any coupons or vouchers redeemable for tobacco products or Nicotine Delivery Products within the town of Wareham.
- 6. Out-of-Package Sales:** 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. All retailers must comply with 940 CMR 21.05 which reads: “It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S. C.§§1471 through 1476 and 16 CFR §1700 et. Seq.”
- 7. Self Service Displays:** All self-service displays of tobacco products and/or Nicotine Delivery Products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.
- 8. Vending Machines:** All tobacco and/or Nicotine Delivery Product vending machines are prohibited.
- 9. Cigar Sales Regulated:** No person shall sell or distribute or cause to be sold or distributed a single cigar. 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 \$5.00 or more. This section shall not apply to (a) the sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more or (b) 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 Wareham. The Wareham 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.

**10. Sale of Flavored Tobacco Products:** No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.

**11. Prohibition of the Sale of Tobacco Products by Health Care Institutions:** No health care institution located in Wareham shall sell or cause to be sold tobacco products. No retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products.

**12. Violations:** It shall be the responsibility of the establishment, 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: 1) in the case of a first violation, a fine of three hundred dollars (\$300.00); 2) in the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days; and, 3) in the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for thirty (30) consecutive business days.

A. 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.

B. 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 the consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

C. Nicotine Delivery Product Sales Permit, which notice shall contain the reasons, therefore, 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 therefore in writing. After a hearing, the Wareham Board of Health shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if the Board finds that a sale to a minor occurred. For purposes of such suspensions, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products and Nicotine Delivery Products shall be removed from the retail establishment upon suspension 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.

D. Any permit holder who does not pay the assessed fine within twenty-one (21) days from fine issuance may be subject to criminal proceedings.

- 13. Non-Criminal Disposition:** 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 21D or by filing a criminal complaint at the appropriate venue. Each day any violation exists shall be deemed to be a separate offense.
- 14. Enforcement:** Enforcement of this regulation shall be by the Wareham Board of Health or its designated agent(s). Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Wareham Board of Health or its designated agent(s) and the Board shall investigate.
- 15. 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.
- 16. Effective Date:** This regulation shall take effect on April 1, 2016.
- 17. Blunt Wraps:** On January 16, 2013, the Wareham Board of Health voted to amend their regulations on tobacco. The regulation bans the sale of blunt wraps, bans the commercial use of Roll-Your-Own Machines and bans smoking “in all outdoor areas where food and/or beverages are served to the public by employees of restaurants, bars and taverns”. On February 6, 2013 the Wareham Board of Health voted this regulation into effect on February 13, 2013.

**Executive Summary of the Massachusetts Smoke Free Workplace Law (M.G.L. Chapter 270, Section 22)**

**Background:** Since July 5, 2004, all enclosed workplaces with one or more employees must be smoke-free. Designated smoking areas or smoking rooms are not permitted. Limited exceptions are noted below. The full text of the law, fact sheets, and no smoking signs are available at [www.mass.gov/dph/mtcp](http://www.mass.gov/dph/mtcp).

**Key provisions include:**

1. Mandates that all enclosed workplaces with one or more employee, or that are open to the public be smokefree. Further any company vehicle that is shared between employees or is used to transport employees or the public must be smoke-free. All municipal vehicles must be smoke-free.
2. Smoke may not migrate back in to the enclosed workplace.
3. Some exemptions exist.
  - A. Private residences, except when the residence is being used to operate a group childcare center, school age day care center, school age day or overnight camp, a health care related office or a facility licensed by the office of child care services;



- B. Membership associations (Private Clubs) defined as non-profit voluntary groups, organized under M.G.L. Chapter 0, while not open to either the public or non-members who are not invited guests;
  - C. Guest rooms in hotels, motels, or similar accommodations that have been designated as “smoking” rooms;
  - D. Retail tobacco stores that prohibit entry to anyone under the age of 21;
  - E. “Smoking” or “Cigar” bars that derive a majority of their revenue from tobacco sales and are granted permission to allow smoking from the Department of Revenue;
  - F. Religious ceremonies where smoking is part of the ritual;
  - G. Nursing homes and acute care substance abuse treatment centers under the jurisdiction of the commonwealth that have received approval from the local board of health may have a designated smoking area for permanent residents only; and
  - H. Tobacco laboratories / tobacco testing facilities that conduct medical or scientific research on tobacco smoke.
4. Signage is required to indicate where smoking is not permitted or for those areas exempt from the law. Signs must be posted in a manner that is visible to all employees, customers or visitors while in the workplace. Additional signs may be posted in public areas.
  5. Smoking in a place where it is prohibited may result in a \$100 civil fine to the smoker. Employers or business owners may receive fines ranging from \$100 to \$300 for permitting smoking. Local boards of health, municipal governments, the Alcoholic Beverages Control Commission and the Department of Public Health may enforce this law.
  6. Cities and towns may have local laws that are stricter than this law. Restrictions include banning smoking in private clubs, cigar bars, tobacconists, nursing homes, and outdoor areas.

On August 26, 2005 the Department of Public Health’s *Regulations Implementing Chapter 270, s.22 (105 CMR 661.000)* went into effect. These regulations provide additional definitions for membership associations, and outdoor spaces. A copy of the regulation and a summary are available at the DPH website [www.mass.gov/mtcp](http://www.mass.gov/mtcp). All fact sheets on the DPH website incorporate the state law, MGL Chapter 270, Section 22 and the regulations (*105 CMR 661.000*).

### **Ban on Smoking on Town Beaches/Town Parks & Playgrounds**

Effective November 4, 2015 the Board of Health voted to ban smoking on public beaches. The ban restricts the use of all delivery products, cigarettes, e-cigarettes, pipes, cigars and/or any form of smoking on town beaches; beach dunes access points and waterways. The ban also includes no smoking in and/or on any public park, public playground and public recreation areas.