

Town of Weymouth Health Department

**Weymouth Health Department
Daniel McCormack, R.S., C.H.O
Director of Public Health**



**75 Middle Street
Weymouth, MA 02189
Tel. (781) 340-5008
Fax. (781) 682-6112
www.weymouth.ma.us/health**

Board of Health Regulation #31 Restricting the Sale of Tobacco and Nicotine Delivery Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin²;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

Whereas 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 youth³;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported⁴;

Now, therefore it is the intention of the Weymouth Board of Health to regulate the sale of tobacco products and nicotine delivery products.

B. Authority:

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

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

³ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁴ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a “Black and Mild” Cigar.

C. Definitions:

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

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.

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.

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.

Compliance Check: A site visit performed by the Health Department or an agent of the Health Department where an underage operative attempts to purchase tobacco or nicotine delivery products at a permitted tobacco and/or nicotine delivery product establishment without any identification. The purpose of the check is to ensure that permitted establishments are asking for identification and are not selling tobacco or nicotine delivery products to anyone under the age of twenty-one (21).

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

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco or nicotine delivery product.

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.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco 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.

Retail Establishment: An establishment that sells, tobacco products and tobacco paraphernalia, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Weymouth Health Department.

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.

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 or makes cigarettes, any other tobacco product or nicotine delivery product.

D. Tobacco and Nicotine Delivery Product Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell or provide a tobacco or nicotine delivery product or permit a tobacco or nicotine delivery product to be sold to a person under the minimum legal sales age. The minimum legal sales age in Weymouth is twenty-one (21).

2. Required Signage

- a. 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 persons under the age of twenty-one (21) is prohibited.” The notice 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 4 or greater than 9 feet from the floor.
- 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 Weymouth Health Department. 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 4 feet or greater than 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 tobacco products at retail shall conspicuously post signage provided by the Health Department that discloses current referral information about smoking cessation.

3. Identification: Each person selling or distributing tobacco or nicotine delivery products shall verify the age of the purchaser by means of a valid 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. All retail sales of tobacco or nicotine delivery products must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco and Nicotine Delivery Product Sales Permit:

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

2. As part of the Tobacco and Nicotine Delivery Product Sales Permit application process, the applicant will be provided with the Weymouth 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 federal, state and local laws regarding the sale of tobacco and this regulation.

3. 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.

4. The fee for a Tobacco and Nicotine Delivery Product Sales Permit shall be determined by the Weymouth Health Department and approved by the Mayor pursuant to the Town of Weymouth Ordinance section 5-305.

5. A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery products.

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

7. No Tobacco and Nicotine Delivery Product Sales Permit holder shall allow any employee to sell tobacco products or nicotine delivery products until such employee reads this regulation and federal 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 and federal laws.

8. 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.

9. Issuance of a Tobacco and Nicotine Delivery Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic Compliance Checks of his/her retail establishment to ensure compliance with this regulation.

10. 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 and/or has not satisfied any outstanding permit suspensions.

11. Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits.

- (a) At any given time, there shall be no more than seventy (70) Tobacco and Nicotine Delivery Product Sales Permits issued in Weymouth. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within thirty (30) days of expiration 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 Health Department.

F. Cigar Sales Regulated:

1. No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed cigars unless the cigars are contained in an **original package of at least four (4) cigars and is sold at a retail market price or five dollars (\$5) whichever is higher**

2. This Section shall not apply to:

- a. The sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
- 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 Weymouth.

3. The Weymouth 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.

G. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Weymouth.

H. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

I. Out-of-Package Sales:

The sale or distribution of tobacco products in any form other than an original factory-wrapped package is prohibited. 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.

J. 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.

K. Vending Machines:

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

L. Non-Residential Roll-Your-Own Machines:

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

M. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Health Care Institutions:

After January 1, 2015, No health care institution located in Weymouth 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; except those wholesalers licensed under chapter sixty two, section sixty seven of the Massachusetts General Laws may sell tobacco for wholesale only to resellers who possess a valid Massachusetts Tobacco Retailer License and who are registered through the Department of Revenue to collect sales tax. Additionally, tobacco products sold by wholesalers shall be stored away from the retail sales area and not visible to non-resellers.

N. Prohibition of the Sale of Tobacco and Nicotine Delivery Products by Educational Institutions:

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

O. Violations:

1. 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:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
- b. In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco and Nicotine Delivery Product Sales Permit shall be suspended for seven (7) consecutive business days.

- c. In the case of three violations within a 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.
- d. In the case of four violations within a 36 month period, the permit will be revoked.
- e. Any sale of tobacco to a minor may require the license holder to attend tobacco sales training.

2. Compliance checks will be conducted periodically at all permitted establishments. 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.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco or nicotine delivery products directly to a consumer while his or her permit is suspended will be subject to revocation of their permits.

4. The Weymouth Health Department shall provide notice of the intent to suspend 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 Health Department's decision and the reasons therefore in writing. After a hearing, the Health Department shall suspend the Tobacco and Nicotine Delivery Product Sales Permit if, the Health Director finds that a violation of this regulation occurred. For purposes of such suspensions, the Health Director 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 and nicotine delivery products shall constitute a separate violation of this regulation.

P. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts 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.

Q. Enforcement:

Enforcement of this regulation shall be by the Health Department or its designated agent.

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Weymouth Health Department and the Health Department shall investigate.

R. 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.

S. Effective Date:

This amended regulation was voted unanimously on December 27, 2018 and shall take effect on December 30, 2018.